



Birdlife position on development of a new framework for technical measures in the reformed CFP

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1. Introduction

The Technical Conservation Measures Framework establishes a broad set of rules which govern how, where and when fishermen may fish. They are established for all European sea basins, but they differ considerably from one basin to another, in accordance with the regional conditions. The new proposal from the European Commission will cover only the North Atlantic and North Sea, replacing Regulation 850/1998 and related regulations. The Baltic Sea and the Mediterranean have separate regulations (respectively 686/2010 and 1967/2006).

The European Commission's consultation on the new framework regulation intends to address the reformed Common Fisheries Policy (CFP), particularly in respect of:

- Improved selectivity
- Alignment with environmental legislation and integration of ecosystem-based management, including minimisation of the ecosystem impacts of fishing gears
- A shift away from micro-management
- Move to regionalisation
- Results-based management based on high-level objectives and devolved implementation
- Enhanced stakeholder input, especially from Advisory Councils (ACs)
- Landings obligation
- Creation of incentives to foster greater responsibility and compliance
- Simplification of the rules

BirdLife welcomes the general direction of travel in the European Commission's consultation document, notably the recognition of the much closer alignment of the new CFP with 'broader environmental and ecological policy objectives, as included in the Marine Strategy Framework Directive (MSFD) and Natura 2000'.

In particular, the EU Plan of Action for reducing incidental catches of seabirds in fishing gears¹ adds context for the need to design and implement technical measures for mitigating this negative impact on seabirds.

We also welcome the European Commission's specific language in the sub-section title 'Minimising the ecosystem impact of fisheries'². 'Minimising' has particular significance in terms of reducing negative impact to the lowest level possible rather than simply reducing (to some unspecified level, which could be a negligible reduction).

BirdLife also highlights the need for supporting the research and development, pilot and demonstration projects to develop the technology required to fulfil the CFP's objective of minimising ecosystem impacts. In this context, the Scientific, Technical and Economic Committee for Fisheries (STECF)'s (July 2013) review³ of the Data Collection Framework (DCF) lends strong support from the European Maritime Fisheries Fund (EMFF) to the development of measures designed to mitigate the impact of fisheries on 'non-fisheries protected species (including for example marine mammals, birds, marine turtles, sharks)'. STECF takes the view that, once fisheries have been identified which incur significant bycatch of – and therefore have 'high impact' on – such non-target species, financial resources under the EMFF could be allocated to:

'(a) fund studies on mitigation measures, (b) monitor the effectiveness of such mitigation measures, and (c) to assist fishers in allocating increased resources to the use of more environmentally fishing gears.'

Of the 12 questions posed in the Commission's consultation document, BirdLife addresses the 9 on which we have input to make.

¹ http://ec.europa.eu/fisheries/cfp/fishing_rules/seabirds/seabirds_communication_en.pdf

² Note that 'minimise' is also in keeping with Art 6.6 of the FAO Code of Conduct for Responsible Fisheries: States and users of aquatic ecosystems should minimize waste, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species.

³ http://stecf.jrc.ec.europa.eu/documents/43805/544890/2013-07_STECF+13-12+-+Review+of+DC-MAP+part+2_JRC83566.pdf

2. Simplification and regionalisation

CONSULTATION QUESTION: 'How best do we ensure technical measures are adaptable and responsive to changing conditions at a regional level?'

The consultation document observes that technical measures have become more numerous and complex over time, creating 'a vicious circle of detailed technical descriptions... specified in additional legislation', and that this works against compliance and control. As such, 'Simplifying the technical measures to make them easier to understand and enforce is a fundamental objective'.

BirdLife fully supports this interpretation and aim. However, we make two main observations:

- 1) The new CFP sets the conditions in which this growing accumulation of fixed rules is no longer appropriate or fit for purpose. In particular, with the phased introduction of the landing obligation, especially so for the demersal fisheries, a prescriptive set of technical measures will rapidly become redundant as operators strive to maximise gear selectivity and develop avoidance strategies. In other words, given that the landing obligation should be a game-changer, it is anticipated that technical measures will henceforth be characterised by a high level of innovation, evolve more pragmatically and adaptively, and so move away from the accretion of amendment upon amendment of the rigid, technical measures 'bible' that has existed up till now.

In this new scenario, any rationalisation of emerging technical measure solutions as prescriptive measures, applicable across vessels and fleets, should naturally devolve to regional level. The Commission's consultation document addresses the transition from the current governance situation to regionalisation.

It is the Commission's view that 'During the transition period the framework would ensure clarity and legal certainty while regionalisation (of technical measures) develops. Over time, the content of this part of the framework would diminish as plans are adopted and regionally designed measures take the place of the corresponding body of rules.'

BirdLife supports the need for such a framework but urges that this transition process proceeds at a pace commensurate with the rapidly shifting, results-based changes in

technical measures, especially in gear selectivity, that are bound to follow rapidly from the landing obligation.

The transitional regime must not hinder the much-needed development and implementation of effective regionalisation at a time when regional bodies need to become functional and operational with some urgency. Admittedly regional bodies are still in their infancy, and need to place high priority on developing a method of operation, especially in regard to embracing stakeholder advice through the (R)ACs, that is fit for purpose. However, this does not detract from the argument that it is these regional bodies which should take responsibility for designing and prescribing technical measures.

BirdLife therefore urges that the transitional process ensures a framework of clear horizontal measures as a means of supporting and facilitating the rapid development of a regional, bottom-up approach.

- 2) The Commission's desire for simplification for the new regulation should not be at the expense of adding the additional elements called for by the CFP's enhanced ecosystem-based approach. While we fully accept the argument for simplification, the new CFP has a wider scope than previously, arising from synergy with the Integrated Maritime Strategy and in particular the Marine Strategy Framework Directive. The unprecedented alignment of the CFP with an ecosystem-based approach increases the necessary scope of potential technical measures with regard to, notably, mitigating the incidental catch of seabirds, cetaceans, marine turtles and sharks, maintaining the integrity of food webs, and reducing benthic damage from bottom-contacting gears.

BirdLife welcomes this more holistic approach and looks forward to the development and implementation of technical measures which address these ecosystem impacts. As such, we consider it vital that the drive for simplification of technical measures does not work against the need for additional environmentally-driven technical measures where appropriate and necessary. We envisage that such measures would be incorporated into multi-annual plans at a regional level, in the same way as measures for target fish species.

BirdLife therefore believes that efforts to simplify the technical conservation measures should not be allowed to compromise the introduction of additional measures needed to address the new CFP objectives.

CONSULTATION QUESTION: 'Which baseline elements are essential in a framework technical measures regulation? Should they include reference gears?'

BirdLife considers that, in the course of transition and even once regional development of technical measures is well established, there will be a continuing need for a common EU framework of overarching objectives and minimum standards. Among others in such a framework, conservation measures related to non-commercial bycatch species should remain subject to high level regulation to ensure that they are interpreted, implemented, monitored and enforced consistently across Member States. This will help achieve a level playing field and assist in aligning technical measures with environmental legislation under the new CFP.

In this regard, BirdLife urges the Commission to propose the following overarching measures and horizontal guidelines for the development of specific measures within multi-annual plans (this list is indicative and others will be necessary):

- I. Definitions: e.g. for groups of gears, reference gears and ecosystem-based management, cross-reference to best practice technical guidelines, e.g. FAO for reducing incidental catch of seabirds and other bycatch.
- II. For mitigating seabird bycatch, define terms such as bird-scaring/tori line, line weighting/integrated weight longlines and night-setting and, as appropriate, variations in longline fishing associated with such measures, especially bottom-set (or demersal) longline and pelagic longline.
- III. 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.
- IV. 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.
- V. 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.

- VI. Subject to impact assessment, appropriate technical measures contributing to the achievement of the conservation objectives of designated Natura 2000 sites, other MPAs (e.g. OSPAR) and Important Bird Areas (IBAs) shall be adopted as a pre-condition of access to fishing opportunities in those areas.⁴
- VII. Bottom-contacting gears with potentially adverse impact should be excluded from SACs proportionate to the sensitivity of the qualifying feature(s), risk assessment and the conservation objectives of the site.
- VIII. Where there is significant bycatch conflict with seabirds, cetaceans or other non-target species, and in the absence of effective deterrents or modifications of the gear, gill-nets and other static gears should either be subject to spatial and/or temporal bans during periods of highest risk or else there should be transition to alternative fishing gears with proven negligible impact.

BirdLife urges the inclusion of specific baseline elements in the technical measures regulation. These elements should reflect the wider environmental scope of the new CFP and also define reference gears where appropriate.

3. Incentivising stakeholders

CONSULTATION QUESTION: 'How and what incentives can be built into regionally designed technical measures taking account of the incentive to be more selective, created through the introduction of the landing obligation?'

Mandatory measures are the only sure way to achieve action-driven results for the new CFP objectives. Nevertheless, incentives can be created to ensure and facilitate compliance with these measures.

In terms of incentives related to the landing obligation, it is clear that the incentive to minimise landings which will count against quota and incur onshore disposal costs will be compelling in itself as a means of driving regionally designed technical measures. However, this may have less traction in the Mediterranean where regulation is through effort control.

⁴ As justification for this scope of what constitutes a MPA, achieving GES under the MSFD calls for the establishment of a coherent network of marine protected areas which are not restricted to Natura 2000 sites but also include other contributory areas. Moreover, the EU Seabird Plan of Action encourages MPAs to establish measures not just for SPAs but also for other MPAs and Important Bird Areas (IBAs).

Due to increasing demand for certified sustainable and 'green rated' seafood, the value and sale of fisheries products is often underpinned by the conditions and status of local ecosystems, with responsible and healthy fisheries generally having greater market access. This provides additional incentive for sustaining and restoring biodiversity through (e.g.) reduced by-catches.

Under the EMFF, eligibility of support for 'improved fishing techniques and gear selectivity, reduced impacts of fishing activities on the environment or achieving a more sustainable use of marine biological resources' (Art 36.1), when linked to the obligation on Member States to apply the new CFP Articles 12 and 17, serves as a further incentive, as does under EMFF Art 38 (e,f), namely that the EMFF may support the management, restoration and monitoring of Natura 2000 sites and other MPAs. The management of such sites should require access only by fishing gears which do not result in site deterioration against its conservation objectives. This, in turn, is an incentive for gear adaptation and innovation.

The EU Plan of Action for reducing incidental catches of seabirds in fishing gears clearly 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.'*

BirdLife notes, however, that the EU Plan of Action, despite having been adopted in November 2012, has so far had little impact on gear adaptation. To our knowledge, only Germany has funded gear mitigation or replacement for this purpose while other countries have declined to do so under the EFF. More specific and robust direction from the Technical Measures Framework is needed to drive uptake in this direction.

Fresh impetus for such gear modification should follow from Art 17 of the new CFP which requires that *'Member States shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact...'*. This offers another route whereby, providing Member States apply this filter ambitiously and set a high threshold for low impact fishing, incentives for best practice can be built into regionally designed technical measures.

Lastly, in promoting the use of mitigation measures for minimising seabird bycatch, BirdLife has demonstrated that in longline fisheries, the application of mitigation measures can be economically advantageous to the operator, often significantly so over the course of a fishing season. This incentive arises when the cost of mitigation is more than compensated for by the increased fishing efficiency resulting from reduced bait-snatching by seabirds (since more hooks sink to fishing depth

with intact bait). Secondly, the need to replace (increasingly expensive) bait lost to seabirds is in itself an additional cost. BirdLife can supply peer-reviewed examples of such trade-offs and has also demonstrated the same in some of its own data collection on experimental trials in which catch rates of target fish on longlines accompanied by mitigation measures were measured against those in controls with no mitigation. Such case studies provide a valuable 'win-win' for both bird conservation and the fisheries sector.

BirdLife supports a strong and diverse range of financial, operational and market incentives to facilitate compliance with the emergence of regionalised technical measures.

CONSULTATION QUESTION: 'Are there areas where soft law could be used to support technical measures rules?'

The EU Plans of Action for, respectively, seabirds (COM(2012)665final) and sharks (COM(2009)0040), following the relevant FAO IPOAs, should support technical measures rules. Implementation of technical measures under the EU PoA-Seabirds should be compliant with FAO best practice guidelines for reducing incidental catch of seabirds in fishing gears⁵.

BirdLife therefore agrees that soft law can support technical measures rules, illustrating this with the issue of seabird bycatch.

4. Elimination, reduction and avoidance of unwanted catches and minimising the ecosystem impact of fishing gears

Insofar as the generally accepted interpretation of 'unwanted catches' is fish and invertebrate discards, BirdLife confines its comments to minimising the ecosystem impact of fishing gears.

CONSULTATION QUESTION: 'Are there specific fisheries where there is a[n] immediate need to reduce and avoid unwanted catches?'

In terms of bycatch of seabirds and other ETP species, priority should be given to fisheries operating in Natura 2000 sites, other MPAs, and also marine IBAs⁶ (see also footnote 4, above).

⁵ <http://www.fao.org/docrep/015/i1145e/i1145e00.htm>

⁶ For marine IBAs in EU waters and elsewhere, see <http://maps.birdlife.org/marineIBAs/default.html>

Based on ICES advice, the EU Plan of Action (EU-PoA) for Seabirds observes that seabird mortality as a result of interaction with fishing gears is ‘substantial in a number of areas within EU fisheries’, with longlines and static nets responsible for the highest bycatch but with trawl and purse seine net fisheries also implicated’. In 2013, ICES updated its advice on key interactions between fishing gears and seabirds in EU waters⁷. The consultation document states that ‘The choice of measures to achieve the conservation objectives [of MSFD and Natura 2000] may involve a ‘trade-off’ between exploitation of resources and conservation of protected species and sensitive areas. Balancing the legitimate economic expectations of fishermen with the societal expectations of providing protection for fauna will be crucial’.

BirdLife notes that *habitats* are also in the scope of this environmental legislation and not just ‘fauna’. In addition, any balance struck needs to recognise that the effect of Article 5 (a) of the Birds Directive is, inter alia, to require Member States to prohibit the capture or killing of individual birds in the course of fishing activities, even where such capture or killing is unintentional and instead arises merely from the author of the act having accepted its ‘possibility’. Furthermore it is submitted that Art 9 of the Birds Directive provides no scope for derogation from this obligation. In other words, the application of proportionality in ‘balancing’ economic and societal protection expectations is strongly influenced by the legal obligation under the Birds Directive to avoid capture or killing of birds.

BirdLife highlights that alignment of the CFP with environmental legislation identifies fisheries where there is an immediate need to reduce and avoid unwanted catches and damage to habitats.

CONSULTATION QUESTION: ‘If improved selectivity and avoidance measures such as real-time closures and moving-on provisions are important to reduce unwanted catches, should they be developed regionally or through co-decision?’

The best conditions for ensuring improved selectivity and avoidance measures is to avoid co-decision processes and instead devolve responsibility for technical measures to the regional level where measures can be tailored to specific fisheries and local conditions, and adapted as necessary. From a Mediterranean perspective, however, where the diversity of fishing practices is exceptionally high, specific local conditions can also be relevant. All measures should be subject to demonstration and pilot programmes, especially at regional level, to develop best available evidence for measures before they are rolled out to fleets. Nevertheless, where robust demonstration and pilot

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http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2013/WKBYCS/wkbycs_final_2013.pdf

programmes have already demonstrated the best way forward, measures should be applied directly and rolled out to the whole fleet.

This will be as necessary for the landing obligation (especially for demersal fisheries, where implementation is bound to have unintended consequences) as it is for the development and testing of mitigation measures for minimising bycatch of seabirds and other non-target species. BirdLife has considerable experience of the latter, having developed and implemented a programme for working at sea with demonstration vessels to ground-truth and tailor mitigation solutions to the operational circumstances (particular vessels and fishing methods in their ambient sea conditions and seabird assemblage) in order to make the case for scaling up to fleet level.

BirdLife supports development of selectivity and avoidance measures to reduce unwanted catches at regional level. Sufficient knowledge through already established pilots and programmes should ease the implementation of measures.

CONSULTATION QUESTION: ‘How can we include mitigation measures for protecting species such as cetaceans, seals and seabirds as well as sensitive habitats in the technical measures framework?’

The EU Plan of Action (EU-PoA) for reducing incidental catches of seabirds in fishing gears has a specific objective to achieve the ‘Implementation of mitigation measures where information indicates occurrence of seabird bycatch’. This objective recommends a number of actions, including 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 under this objective also specifies that ‘Mitigation measures should comply with minimum technical standards as set out in BirdLife and ACAP (Agreement on the Conservation of Albatrosses and Petrels) guidelines⁸.’ (Globally, 13 countries have ratified the ACAP, including Spain, France and UK).

In the case of technical measures 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

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<http://www.acap.aq/index.php/en/component/search/?searchword=mitigation%20measures&searchphrase=all&Itemid=101>

mitigation. This is also the experience of BirdLife International's Albatross Task Force (ATF⁹) 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. As appropriate, a suite of measures may best address a given fishery-seabird bycatch interaction.

BirdLife supports introducing already proposed measures, alone or in combination, under existing EU documentation including the EU Plan of Action for reducing incidental catches of seabirds, and urges alignment with other best practice frameworks such as FAO.

CONSULTATION QUESTION: 'Are there mitigation measures that should be applied across all fisheries or are such measures regionally specific'

While we recommend that the framework includes a number of horizontal elements (see 2, above) which set standards for the general application of mitigation measures, in BirdLife's extensive practical experience of seabird bycatch mitigation, technical solutions – whether singly or in combination – are best tailored to the specific conditions of a fishery or region/locality.

BirdLife highlights 3 high priority fisheries in need of urgent seabird by-catch mitigation:

1) The Gran Sol demersal longline fishery for hake

Under Specific Objective 3 of the EU-PoA for seabirds, responsible parties, including the European 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*

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

⁹ http://www.rspb.org.uk/Images/atf_annual_report_2011_tcm9-319048.pdf

BirdLife has studied the Gran Sol fishery and is willing to recommend an appropriate suite of mitigation measures.

In 2006-07, an independent on-board survey¹⁰ was made of the spatial and temporal interaction between the Gran Sol fishery (W Ireland, ICES Area VII, and to a lesser extent also VI) 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 year-round 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 while 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 (including >39,000 Great shearwaters *Puffinus gravis*) captured per year by the Spanish fleet activity. At the time this bycatch rate represented the highest in any single global longline fishery¹¹.

Reduction of deck lighting to a minimum proved to be effective, with “only” 11 birds captured during the setting of 40,800 hooks, resulting in a bycatch rate of 0.27 birds per 1000 hooks. Even so, this rate is still of concern.

2) Bay of Biscay

Of particular concern are ICES areas VIIIa and VIIIb. 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 Environment¹²). Preliminary results suggest that the potential

¹⁰ 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, Spain) 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.rspb.org.uk/Images/shadow_Community_Plan_of_Action_tcm9-246779.pdf

¹¹ http://www.int-res.com/articles/esr_oa/n014p091.pdf

¹² <http://www.fameproject.eu/en/>

impact of fishing gears (including longlines, purse seines and set-nets) on seabirds could be high. This is particularly so for the Balearic shearwater *P. mauretanicus*, Europe's most threatened seabird, given that these areas represent the main non-breeding grounds of the species (especially July-October), and that bycatch (notably in demersal longlines) has been identified as one of its two main threats¹³. Areas VIIIa and b include a wider variety of seabird species than the more pelagic areas, including several ETP species.

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

Evidence is emerging that purse seines can take significant bycatch of Balearic shearwater (a Critically Endangered species) in this region. Data collected under the EU-funded FAME project in 2010-2012 (Oliveira et al 2014, unpublished) by SPEA (BirdLife Partner) and Universidade do Minho, both on board fishing vessels and via fishermen's questionnaires, suggests that substantial numbers of Balearic shearwaters (3,334) might be caught annually, mainly in purse seines but also in other gears including longlines, gillnets and trawls.

No mitigation is currently known for purse seine nets. Subject to research and development of practical solutions, the use of purse seine nets in ICES Area IX should be subject to mitigation measures and regular monitoring such that the bycatch of Balearic shearwaters and other seabirds is minimized.

BirdLife supports the need to establish horizontal measures across all fisheries but recognises the necessity to develop and tailor solutions to the specific conditions of individual fisheries. We have highlighted three such priority fisheries which incur unacceptably high levels of seabird bycatch.

5. How and when to deliver this across all sea basins?

CONSULTATION QUESTION: 'Is there a need for a different technical measures framework in the different sea basins, or should there be a common framework?'

BirdLife considers that every effort should be made to derive a common overarching framework applicable to all sea basins, under which there will be flexibility for the development of regionally specific measures. This would be in keeping with Option 3 set out in the Commission's Oct 2012

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

roadmap¹⁴. We recognise that the advancement and governance of regionalised decision-making differs across sea basins, with some more fit for purpose than others, but this should not detract from the benefits of creating an EU-wide framework of objectives and guiding principles for setting technical conservation measures.

BirdLife supports the establishment of a common framework of minimum standards applicable across all sea basins, and urgent revision of all regional regulations to ensure coherence of technical measures with such a framework.

Contact:

Bruna Campos, EU Marine and Fisheries Policy Officer, BirdLife Europe, bruna.campos@birdLife.org,
tel: +32 2385099

Euan Dunn, Principal Marine Advisor, Royal Society for the Protection of Birds (RSPB/ BirdLife UK),
euan.dunn@rspb.org.uk, tel: +44 1767 693302

¹⁴ http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2013_mare_002_tm_protection_marine_organisms_en.pdf