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**Administrative and
environmental control of
mediterranean fishery**

**Controle administrativo e
ambiental da pesca mediterrânea**

Oscar Expósito-López

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Administrative and environmental control of mediterranean fishery*

Controle administrativo e ambiental da pesca mediterrânea

Oscar Expósito-López**

Josep Ramon Fuentes i Gasó***

Abstract

Sustainable fishing is an increasingly pressing political and social demand ordered by environmental sensitizations of Western society and the increasingly alarming lack of fishing resources. To strengthen marine biodiversity and the economic sustainability of fisheries, regulations are being adopted which, while affecting all fishing grounds, it is usually mentioned especially the importance of the Mediterranean, greatly affected by millennia of human activity. It is therefore necessary to review and revise the existing administrative controls and the resources available to the executive in order to ascertain the situation of Mediterranean fisheries, environmental and economic impacts and the real possibilities for effective control. To this end, the rules will be analyzed and their real applicability contrasted with the data provided by the Public Administrations to observe how there is an absolute lack of control of the administrative sanctioning norms in high seas the competent authorities do not have the means or technical expertise to deploy the effects of the laws. Laws that are also increasingly complicated and disseminated fruit of an unnecessary and abundant administrative hypertrophy. Finally, it points to a move towards sustainable fishing which, according to the data obtained, is nothing more than words because economic and geopolitical needs continue to push practical reality towards trawling.

Keywords: fishing; marine conservation; environment control; marine protection areas; mediterranean protection.

Resumo

A pesca sustentável é uma demanda política e social cada vez mais urgente, motivada pela sensibilização ambiental da sociedade ocidental e pela falta cada vez mais alarmante de recursos pesqueiros. Para fortalecer a biodiversidade marinha e a sustentabilidade econômica da pesca, estão sendo adotadas regulamentações que, embora afetem todos os locais de pesca, costumam mencionar especialmente a importância do Mediterrâneo, muito afetado por milênios de atividade humana. Portanto, é necessário analisar e revisar os controles administrativos existentes e os recursos disponíveis para o executivo a fim de verificar a situação da pesca no Mediterrâneo, os impactos ambientais e econômicos e as possibilidades reais de controle efetivo. Para

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isso, as regras serão analisadas e sua real aplicabilidade será contrastada com os dados fornecidos pelas Administrações Públicas para observar como há uma absoluta falta de controle das normas administrativas sancionadoras em alto mar, pois as autoridades competentes não têm os meios ou a experiência técnica para implementar os efeitos das leis. Leis que também são cada vez mais complicadas e disseminadas, fruto de uma hipertrofia administrativa desnecessária e abundante. Por fim, aponta para um movimento em direção à pesca sustentável que, de acordo com os dados obtidos, não passa de palavras, pois as necessidades econômicas e geopolíticas continuam a empurrar a realidade prática para a pesca de arrasto.

Palavras chave: pesca; conservação marinha; controle ambiental; áreas de proteção marinha; proteção mediterrânea.

1 Introduction

The Mediterranean Sea has been, since the dawn of Western civilization, a fundamental element for the economic and social development of the peoples that make up its entire ring road. From Europe, cradle of Greece and Rome, to Africa, where Carthage or Egypt was located, passing through Asia, with sites as important as Constantinople or Tyre; the sea has provided an unequalled exchange of products and cultures and, in addition, food for millennia to the citizens of coastal countries. The 1978 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution itself is now signed with the same will, the signatory parties being aware, the “economic, social and cultural value of the marine environment of the Mediterranean Sea Area and its importance for health”, as well as the “duty to preserve this common heritage for the benefit and use of present and future generations”.

What differentiates past and present times is the technological advance in both the shipping and fishing sector, so that sailing the seas and hunting prey to feed our populations is much easier, but with the problem that there is a much larger population, to which must be included not only the coastal, but also the rest of the territory, and to this is added the international trade of which the countries are part. The current fishing is no longer designed to catch what is necessary to survive

and sell at retail level, but to reap great benefits based on a system of exploitation of the sea that causes, in an internationally diverse marine area, an alarming loss of biodiversity. States, realizing the problem that this entails for themselves, are beginning to take measures increasingly close to the environmental protection of marine territories to bind the wounds of the Mediterranean and try to heal them. To this end, there are many checks by executives that can be divided between administrative checks before and after fishing. These will be analyzed to understand the actions taken by the Iberian and Balearic coast as part of the problem and the solution to protect marine life and the future of fishing resources in this sea of ancient history.

2 Fisheries and marine ecology, a challenge for the mediterranean sea

The marine environment is a natural system that, despite being inaccessible to humans directly, unlike land, technological advances throughout history have allowed it to be exploited and used in different ways to a point where it suffers significant impacts and pressures at the environmental level. This is because “marine ecosystems play a decisive role in our lives and are an important factor for economic development, social welfare and quality of life”¹.

In the Mediterranean Sea, the fruit of its history and civilization, this aspect can be much more aggravated than in other places wider or far from civilization. Examples of this are fishing, from which a growing European, African, and Asian population is fed, tourism encouraged by the recreational transport of people, the involuntary transfer of invasive alien species that severely damage marine ecosystems² and transport of

¹ Fuentes i Gasó, Josep Ramon. Avances en la protección y conservación del medio marino español. El nuevo marco para la ordenación del espacio marítimo. *Revista Catalana de Dret Ambiental*, v. 8, n. 1, p. 1-44, 2017. p. 3.

² Being, as highlighted by Brufao Curiel, Pedro. Las especies exóticas invasoras y el derecho, con especial referencia a las especies acuáticas, la pesca recreativa y la acuicultura. *Revista Catalana de Dret Ambiental*, v. 3, n. 1, p. 1-54, 2012. p. 12. marine trafficking is a problematic international instrument, inadvertently causing biological invasions of invasive alien species such as zebra mussels (*Dreissena polymorpha*), freshwater clams (*Corbicula fluminea*), Japanese stalk-eyed crustaceans (*Palaemon macrrodactylus*), golden mussel (*Limnoperna fortunei*).

goods. However, despite its historical and commercial importance, it is also an important natural enclave and biodiversity that must be protected since two out of every three species that inhabit it are endemic to the Mediterranean, resulting in one of 25 biodiversity hotspots around the world³. Despite the importance of the Mediterranean, the 2022 strategic environmental study prepared by the Government of Spain highlights that the state of species conservation (in the six-year period 2013-2018) was highly unfavorable, with 73.95% of the species with this consideration, of which almost 30% was considered within a poor conservation state (report nomenclature for the worst of the states). Consequently, many endemic Mediterranean species are currently on the IUCN Red List⁴, as well as there are many other species whose situation is questioned due to a manifest insufficiency of data to be catalogued in some listing. This becomes a situation of significant environmental danger at the marine level heightened by the destruction and degradation of habitats, pollution and unsustainable exploitation⁵.

It is on this last point that the study will focus, understanding it as one of the three key risk factors for marine biodiversity in the Mediterranean and the importance of legal and administrative control in mitigating environmental consequences. The effects of fishing on marine biodiversity result from incidental catches or deaths, discards, species controlled as harmful

to fisheries or aquaculture, damage to seabed and illegal fishing⁶.

Understanding, in this sense, incidental catches as species that are not subject to marketing (such as seabirds, turtles...); discards such as the return to the sea of undesirable species; species subject to control are those considered toxic; damage to the seabed by trawling⁷ or by providing nutrients to the seabed as is the case with the natural disaster of the Mar Menor in the Region of Murcia (Spain) and; finally, illegal fishing, which is one of the biggest challenges for the sustainability of marine resources worldwide due to the maritime population disorder that implies and whose importance deserves a separate section⁸. However, underwater life is not the only one affected by commercial fishing, and seabirds, for example, are also victims of this activity with a high biological pressure⁹ due to accidental catches. This means that fishing does not only affect underwater biodiversity, but also that which lives off the sea's own resources.

2.1 Legal and Competition Regulation on Marine and Fisheries Protection in the Mediterranean

Despite the importance of the sea,

our legal system has taken a long time to manage and protect the marine environment in an integrated manner. Until the last decade of the twentieth century only sectoral regulations were adopted on the marine environment, without an overview that integrated the multiple activities carried out at sea¹⁰.

nei) and Chinese mitten crab (*Erichsir sinensis*).

³ In this way they defended it GARCÍA, Nieves; CUTTELOD, Annabella. Pérdida de biodiversidad en el Mediterráneo: causas y propuestas de conservación. *Memorias R. Soc. Esp. Hist. Nat.*, n. 10, p. 41-54, 2013 "half of the crabs, 48% of the reptiles, a quarter of the mammals, 14% of the dragonflies, 4% of the sharks and rays, 3% of the birds and 32% of the aquatic plants evaluated to date".

⁴ The Red List of Threatened Species of the International Union for Conservation of Nature (IUCN Red List) is, according to the organization itself, "a critical indicator of the health of the world's biodiversity. Much more than a list of species and their status, it is a powerful tool to inform and catalyze actions for biodiversity conservation and policy changes, which are critical to protecting the natural resources we need to survive. Provides information about distribution, population size, habitat and ecology, use and/or trafficking, threats, and conservation actions that will help provide information for necessary conservation decisions". This information as well as the updated list itself can be found at Disponible en: <https://www.iucnredlist.org/>. Acceso en: 02 enero, 2023.

⁵ GARCÍA, Nieves; CUTTELOD, Annabella. Pérdida de biodiversidad en el Mediterráneo: causas y propuestas de conservación. *Memorias R. Soc. Esp. Hist. Nat.*, n. 10, p. 41-54, 2013. p. 53.

⁶ According to the non-technical summary of the strategic environmental study of the operational program of the European Maritime Fisheries and Aquaculture Fund 2021-2027. p. 12.

⁷ The Marine Strategy of the Levantine-Balearic demarcation (Part IV). p. 104, estimates that there has been 0.13% of the area of the Levantine-Balearic demarcation in the period 2011-2016 that has suffered disturbances on the seabed (311 million m²). It is important to note that the calculation did not consider the factor of trawling believed in the assessment that could double this figure alone. Also highlighted are a large number of Mediterranean ports that could be subject to a high probability of alteration of their seabed such as Tarragona, Ibiza, Alicante o Castellón. p. 104.

⁸ *Vid. Infra*. 5.3. El control de la pesca ilegal, no declarada y no reglamentada.

⁹ In accordance with the marine strategy of the levantine-balearic demarcation (Part IV). p. 59, species such as shearwater (*calonectris*), puffins (*puffinus*), little black cormorant (*phalacrocorax*) and, and to a lesser extent, the audouin's gull (*larus audouinii*), are at serious risk due to these practices.

¹⁰ Fuentes i Gasó, Josep Ramon. Avances en la protección y conservación del medio marino español. El nuevo marco para la or-

The Spanish environmental competence framework is widely distributed among all administrative strata (national, regional and local) in accordance with the constitutional competence rules. However, what differentiates the protection of marine life from other environmental protections is the maritime situation itself, which has some remarkable specialties in the fishing sector, which are clearly limited to the State because Article 149.1.19 endows the State with exclusive competence for sea fishing¹¹. The legislator, with this fact in mind, already decided to resolve the possible discrepancies that might exist at the competence level in marine protection with the administrations of other territorial areas by article 6 of Act 42/2007, December 13, of Natural Heritage and Biodiversity (hereinafter referred to as NHBA) entitled “Powers of Public Administrations on marine biodiversity “. Thus, the General State Administration is responsible for the protection of biodiversity and marine heritage with respect to all species, habitats or critical marine areas in both the exclusive economic zone and the continental shelf, and in spaces in straits under international law or on the high seas. Likewise, it is also responsible for limiting or prohibiting the navigation of ships through marine spaces. In this sense, limiting the autonomous environmental competence, it should also be noted the Judgment of the Supreme Court of Spain (hereinafter, SCS) 2786/2011, May 10, FJ 3, highlights that “The powers of the Autonomous Communities in the field of environmental protection extend [...] to inland waters and islets”. In addition, the first additional provision of the NHBA provides that the protection, conservation and regeneration of fishery resources in external waters shall be regulated by the State Maritime Fisheries Act. It is therefore possible to understand that regional action in sea fishing is very limited and therefore it will be necessary to focus, primarily, on national legislation —stressing the possibility of requesting

cooperation from the regional administrations in these matters—¹².

In order to understand the legal maneuvers adopted in recent years, it is first necessary to understand the objectives and purposes of these rules, it is important to clarify first that the Spanish normative interest could have its epicenter —on fisheries and environmental issues— in the 2030 Agenda plan. In its Sustainable Development Goal 14 on the protection of marine life, it highlights important action fronts against non-sustainable fishing in a way that aims at effective action¹³ from three different areas¹⁴: effective regulation to end illegal, unreported, and unregulated fishing and destructive fishing practices and to promote market access for artisanal fishermen and marine resources. There are also targets in subsidies in this area. Thus, Spanish rules will be analyzed in search of these elements as regards fishing in the Mediterranean Sea, starting with marine protection, in general, and ending with fishing restrictions, in particular.

As regards the protection of marine life, the Spanish legal regulation is defined by Act 41/2010 of 29 December on the protection of the marine environment (hereinafter PMEA) where it is worth highlighting the objectives of protecting marine life clearly inspired by the anthropocentric sense of Article 45 of the Spanish Constitution, that is, that the protection of the environment is based on guaranteeing human well-being and that is why it is important to protect it. This protection is weighted according to the casuistry of the material, protecting it differently according to the physical and

denación del espacio marítimo. *Revista Catalana de Dret Ambiental*, v. 8, n. 1, p. 1-44, 2017. p. 3.

¹¹ On the definition of sea fishing there has been controversy that, finally, was settled by the Constitutional Court when it defined in its STC 147/1998, of 7 July, FJ 7 that by the concept of sea fishing “it is necessary to understand the regulation of extractive activity and, as its budget, the regime of protection, conservation and improvement of fishery resources”, therefore competition in sea fishing “includes rules on the resources and areas where fishing may be carried out (funds, fishing grounds, distances, quotas), the periods during which fishing may be carried out (closed seasons, hours) and the form and means of extractive activities at sea (gear, means of fishing)”.

¹² *Vid.* Gifreu i Font, Judit. La protección y utilización del demanio marítimo-terrestre a propósito de la reciente jurisprudencia constitucional. Hacia una ordenación integrada y sostenible del litoral de Cataluña. *Práctica Urbanística*, n. 140, p. 1-35, 2016.

¹³ It seems necessary to focus on the effectiveness aspect in accordance with the fourteenth objective, because the Commission seems to be concerned that the measures taken so far in the framework of marine fisheries protection have not had the desired effect and, it should be recalled that efficiency is one of the fundamental principles of administrative action. That is why the rules that establish limitations and controls must consider this principle of effectiveness to allow administrations to have the capacity to act effectively, that is to say that the regulation is applied and achieves the proposed objectives. In this sense, in Spain efficiency must always be an administrative maximum imposed by Article 103.1 of the Spanish Constitution.

¹⁴ It is possible to consult this information on the page enabled to report on the 2030 Agenda by the Government of Spain: Disponible en: <https://www.mdsocialesa2030.gob.es>. Acceso en: 2 enero, 2023.

economic characteristics (whether it is a renewable resource or not, whether it is energy or food, or its level of economic interest...). In sea fishing, therefore, marine biodiversity and the health of the seabed face the quality of life of workers in the sector and other citizens who consume this food¹⁵. Thus, Article 4.1 stresses that marine pollution “causing or likely to cause harmful effects, such as damage to living resources and marine ecosystems –including loss of biodiversity–, risks to human health, obstacles to maritime activities, especially fishing”, among others. Anthropocentric interest, as mentioned, is observed by itself. However, around fisheries and marine protection there is no extensive. The PMEA is a standard whose interest for the study lies in the creation of the Spanish Network of Marine Protected Areas (hereinafter SNMPA) and, in addition, in the obligation of Article 10 to draw up permanently a monitoring program for various aspects of marine welfare but including, for the purposes and interest of the study, the effects of biological pressures resulting from extraction or mortality / wildlife injury, including target and non-target species (through commercial and recreational fishing and other activities).

As regards sea fishing, Act 3/2001 of 26 March on State Sea Fishing (hereinafter SSFA) has as its first objective “to ensure the balanced and responsible exploitation of fishery resources, favoring their sustainable development and to take the necessary measures to protect, conserve and regenerate those resources and their ecosystems”. This regulation lays down the inspection, control, and sanction mechanisms for fisheries in the external sea and lists several species and marine protection infringements that are noteworthy. However, as far as marine protection per se is concerned, this resulted in an essential rule as far as environmental protection and fisheries were concerned because of the executive capacities it confers. However, the rule has been partially repealed by the new Act 5/2023 of 17 March on sustainable fishing and fisheries research (hereinafter SFFRA), whose sole derogation provides that “ Chapters I, II, III, IV and V of Title I are repealed; Title IV, Article 57 and the first additional provision of Act 3/2001 of 26 March on State Maritime Fisheries”. Logically, this includes in general those mechanisms by which sustainable fishing and environmental protection are promoted to redraft it in the new body of regulations. The old

rule, in this matter, was of particular interest in Chapter III, Title I, on protection and regeneration measures which includes within it protection zones; secondly, there was the declaration of intent issued by Article 84, which announced that research in sustainable fisheries and protection of the marine environment would be promoted; also repeals Chapter II, Title I, which dealt with measures for the conservation of fishery resources, which gave the Administration the ability to limit or prohibit fishing by means of closures when necessary to regenerate fishery resources. All these aspects must be treated in accordance with the new regulations, so that the changes in regulations can also be compared since the SFFRA introduces modifications, extensions, and new control concepts to previous regulations such as the limitation of fishing effort.

In the regulatory sphere, special attention must also be paid to the specific regulation offered by Royal Decree 502/2022 of 27 June, regulating the exercise of fishing in national fishing grounds, the purpose of which is, in accordance with Article 1:

establish common rules for the planning and management of the activity of vessels registered under the bottom trawl, purse seine and smaller gear arrangements fishing in the external waters of the national fishing grounds of the Cantabrian and Northwest Sea, the Gulf of Cadiz and the Mediterranean; bottom longline fishing in waters outside the Cantabrian and North-West or Mediterranean national fishing grounds [...] in order to improve the adaptation of its extractive capacity to the state of the fishery resources and to ensure the economic, social and environmental sustainability of the fishing activity.

This Royal Decree is therefore designed to control the fishing system in various fishing grounds, including the Mediterranean, to achieve a sustainable fishing system. The rule shall, of course, apply to vessels flying the Spanish flag registered under the arrangements for bottom trawling, purse seining, ruffle, bottom longline, rail and smaller gear, but, in the special case of the Mediterranean, it will not only be applicable in national waters but also on the high seas¹⁶ According to Article 1.2. of the Royal Decree. This rule is therefore of vital

¹⁵ Sánchez Lamelas, Ana. *La ordenación jurídica de la pesca marítima*. Elcano: Aranzadi, 2000. p. 106.

¹⁶ This concept should be understood in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea. It is therefore the maritime area excluded from the territorial sea, archipelagic waters, internal waters and the exclusive economic zone where States are allowed to fish peacefully —among other faculties—.

importance for the future of sustainable Spanish fishing in the Mediterranean¹⁷.

Finally, it should be mentioned that there is currently an intention to create a package of rules to modernize the fishing legal area. This plan consists of three rules of which one has just entered into force, the SFFRA. On the other hand, the Preliminary Bill on the Modernization of the Control and Inspection against Illegal Fishing is under consideration¹⁸, which seems to have the intention of being a new tool that strengthens the administrative inspection. This preliminary draft law seeks to include new infringements and penalties to those already in force in the State Sea Fishing Act, so as to strengthen the deterrent and repressive aspects of the regulation on illegal fishing. In the area of control and inspection there is also the intention that the new standard orders and significantly extends the existing mechanisms and to add technological and digital innovations to these inspection tools, adapting them to current computer capabilities. Finally, the fisheries legislative modernization package would end a planned law aimed at digitization and sector management and marketing. This last rule, however, risks not being approved due to the proximity of general elections, so there is the possibility that the legal package will be incomplete.

3 Revitalization of traditional fishing gear?

3.1 Gear of fishery and the ecologic conservation of the Mediterranean

As provided for in Article 17.1 SFFRA, only those gears expressly authorized may be used in sea fishing. There are different fishing gears, each with different implications for the marine environment for their effectiveness and connotations. Within commercial fishing, understood as one that is marketed through official

¹⁷ In this sense, as defined in Article 2, if it only affects the Mediterranean fishing zone and not the high seas, the provision would only apply to the waters of the National Fishing Ground located in the Mediterranean Sea, bounded on the west by the meridian of point of Tarifa, including the maritime provinces of Algeciras, Ceuta and Melilla, in length 05° 36' 39,7" west, and on the east by the border with France. Thus, it also applies on the high seas.

¹⁸ Adopted at first reading by the Council of Ministers on 28/12/2022.

channels and that keeps a record of sale in fish markets¹⁹, there are different varieties of fishing gear:

A. Minor fishing gear. Listed in Article 29 of RD 502/2022, they are classified as gill and/or entanglement gear, stopping gear, hook gear and trap gear. The former are defined by Article 30 of the same rule as “those formed by one or more net panels armed between two relinges, the upper one provided with flotation elements and the lower one with ballasts”. The stopping gear, which can only be used in the Mediterranean, is that defined in Article 31 as “fixed net gears, similar to the trap, but much smaller in size, which are positioned perpendicular to the shore with one end fixed to land and the other fixed by means of flotation elements and anchoring”. Hooks gear are those which use the hook as a basic element, as set out in Article 33 and, finally, traps or pots are defined by Article 35 as “gears fixed to the bottom acting like tramps to catch several species”.

B. Bottom trawls. Article 10 of RD 502/2022 defines this type of fishing as “which is operated by one or two vessels which, making use of their engine’s engine power, actively tow, in contact with the bottom, a netting gear in order to catch marine species intended for human consumption or the processing industry”.

C. Purse-seine gear is configured, in accordance with Article 17, by the use of “a network of shape close to the rectangular, whose ends in fists, which encircles shoals of pelagic species and is closed at the bottom by means of a cape called a jareta that passes through a series of rings along the bottom or mocking relinga and causes the net to gather and close, resulting in the bagging of the fish”.

D. Polyvalent gears. They are defined as the rudder, rail, and bottom longline gear, as referred to in Articles 21 to 28 of RD 502/2022, and which are based on the use of fixed gills at the bottom with different characteristics among them.

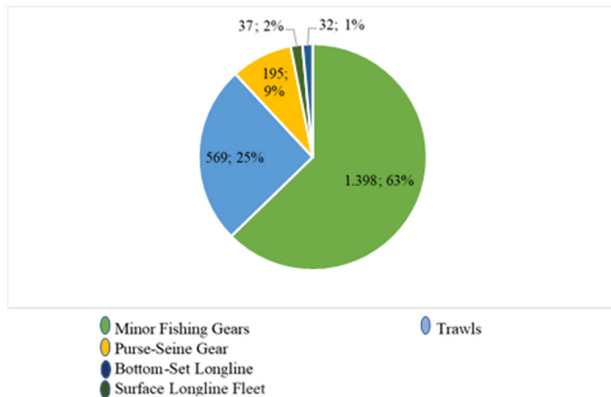
Despite these descriptions, the new article 17.2 SFFRA warns that the Government may, after consultation with those affected and the Autonomous Communities, “lay down the technical characteristics and conditions of use of the fishing gear, gear and gear authorized for the various types of fishing, and of their

¹⁹ This is defined by the Marine Strategy of the Levantine-Balearic demarcation (Anexo III). p. 75.

transport and stowage, the prohibition of their holding on board, and measures to improve and innovate them which, on the basis of the best available scientific information, advise the state of the resources”. Therefore, the main characteristics being those described, these can be modulated depending on the fishing area in which it is fished when the Government considers it necessary to promote this sustainable fishing. This is a point to bear in mind that, although it will have the opinion of the fishing companies concerned, it is still a possible problem of legal certainty for them.

In the Mediterranean Sea, these gears are used more or less frequently and, according to open data from the Ministry of Agriculture, Fisheries and Food, are divided as follows:

Figure 1 - Vessels active in the Mediterranean, 2023²⁰



On fishing gear, however, there are certain prohibitions which are widespread throughout the Community within the Mediterranean framework and which are, in accordance with Article 8 of the Regulation (EC) no. 1967/2006 of the Council, December 21, 2006, on management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea and amending the Regulation (EEC) no. 2847/93 and the Regulation is repealed (EC) no. 1626/94, the use of “a) toxic, soporific or corrosive substances, b) electric discharge generators, c) explosives, d) substances which may explode if mixed; e) towed devices for the collection of red coral, or any other type of coral or similar organisms, f) pneumatic hammers or other percussion instruments for the collection, in particular, of bivalve mollusks which are embedded in the rocks, g) crosses

²⁰ Information extracted from the website of the Ministry of Agriculture, Fisheries and Food (MAPA). Disponible en: <https://www.mapa.gob.es/es/estadistica/temas/estadistica-digital/powerbi-pes-ca.aspx>

of St Andrew and similar shovels for the collection, in particular red coral any other type of coral or similar organisms, h) net cloths of mesh size less than 40 mm for bottom tugs”. In addition, bottom nets may not be used to catch certain species²¹. It shall not be possible to use underwater harpoons when underwater breathing is available or when it is night, sunrise, or sunset.

In addition, at the national level, fishing gear bans are also beginning to emerge. As regards trawling, the most controversial being Article 13 of RD 502/2022, expressly prohibits “the use of pelagic and semi-pelagic trawling gear”, the simultaneous use of bottom trawling with other forms of fishing and anchovy trawling (*Engraulis encrasicolus*), sardine (*Sardina pilchardus*) y Northern albacore (*Thunnus alalunga*), as well as any other species of tuna, the holding on board, transport, disembarkation and unloading of these species are also prohibited. However, in the case of the Mediterranean, catches of up to 10% by weight of sardines may be authorised (*Sardina pilchardus*), anchovy (*Engraulis encrasicolus*), round sardinella (*Sardinella aurita*) and chub mackerel (*Scomber japonicus*). The use of tangones, any device applied to the gear or to the maneuver producing the effect of reducing the mesh, is also prohibited. The holding on board and use of nets of mesh less than permitted, or where appropriate in the respective authorization and, in the Mediterranean, fishing using more than one vessel forming a pair. Another limitation on bottom trawling in the Levantine Sea is also provided for in Article 15.3, which states that “in the Mediterranean fishing zone bottom trawling may only be carried out in funds exceeding the 50-metre isobath²²”. It should also be considered, at national level, that according to Article 17.3 SFFRA those gears containing plastic and its waste, that is, “any fishing gear that meets the definition of waste, including all separate components, substances or materials that were part of or attached to fishing gear when discarded. Fishing gear and its components abandoned or lost are included” (art.

²¹ White tuna (*Thunnus alalunga*), red tuna (*Thunnus thynnus*), swordfish (*Xipbias gladius*), Atlantic pomfret (*Bruma brama*) and certain sharks (*Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Carcharhinidae*; *Sphyrnidae*; *Isuridae* y *Lamnidae*).

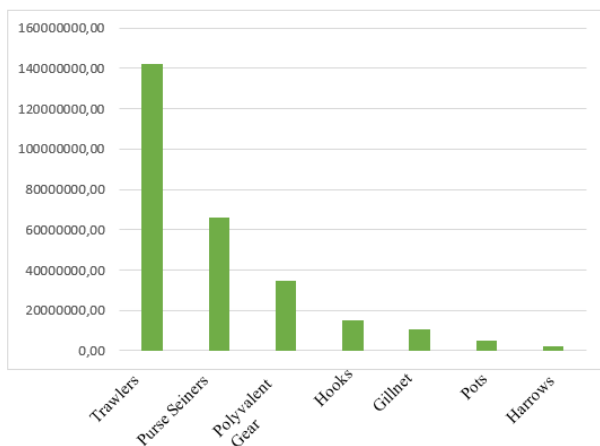
²² However, it should be noted that the article continues with a couple of more restrictive limitations: “in the external waters of certain coastal areas of the Autonomous Community of Catalonia and in part of the coast of the Valencian Community, the use of trawl nets within the limit of three nautical miles of the coast or of the 50-metre isobath is prohibited where the depth is reached at a shorter distance”.

2.am Act 7/2022, April 8, of contaminated waste and soils for a circular economy) shall be subject to the Waste Act and to the extended liability regime of the producer of Royal Decree 1055/2022 of 27 December on packaging waste.

3.2 Rentability of the gear

However, it must be understood that economic interest often takes precedence over the ecological welfare of the environment being exploited. This may result in the public authorities preferring a passive position while boasting of active objectives, depending on the benefits of some arts or other. In this sense, it is essential to turn to the economic reality of fishing, depending on the type of art, to understand why this inactivity.

Figure 2 — Fishery production by fishing technique in the Mediterranean (€), 2022²³



Although the numbers may vary from year to year, the statistical reality of the Ministry of Agriculture, Fisheries and Food shows that in previous years the data are stable enough to say that it is a trend that is repeated over time and, therefore, it is a reality that every year the modality of trawling produces the most benefits, and by far, over the other fishing gears. It is also emphasized that these benefits are obtained by this gear being only 25% of active fishing fleet that uses this modality in its activity, followed by purse seiners, which are 9%. With this graph in hand, therefore, it is easily understandable that a sector as important as fishing, which brings benefits to the national economy, and with a very high

²³ Information extracted from the website of the Ministry of Agriculture, Fisheries and Food (MAPA). Disponible en: <https://www.mapa.gob.es/es/estadistica/temas/estadistica-digital/powerbi-pes-ca.aspx>

degree of assets drag, be pleased with the state passivity in its daily activity against environmental protection²⁴.

3.3 Between economic benefit and conservation of the Mediterranean

The anthropocentric nature with which the State visualizes the right to an adequate environment, placing it in a way subordinated in many cases to social welfare, allows this economic vision of environmental protection. Thus, the ruling of the Constitutional Court of Spain (hereinafter, CCS) 102/1995, June 26, in its FJ 5, essentially highlights this aspect when determining that the environment “consists of the set of physical, cultural, economic and social circumstances that surround people by offering them a set of possibilities to make their lives. People accept or reject these possibilities, misuse them or, by virtue of human freedom. The environment does not determine human beings, but conditions them”, on which it continues to establish, already clearly that the environment “is an essentially anthropocentric and relative concept. There is not and cannot be an abstract, timeless and utopian idea of the medium, outside of time and space. It is always a concrete conception, belonging to today and operating here”. This example, that of trawling and, in general, unsustainable fishing, is one of the clearest cases of the State’s permissiveness with these practices that are counterproductive to the environment, being largely legitimized by the Constitution and democracy, since Western society, and in particular Spanish society, depends on a need for rapid consumption of natural resources to reactivate the economy, which has been stagnant for more than a decade. In this sense, Casado Casado, points to the impairment that this vision can cause on the environment by modifying the rules of the administrative set, budget cuts or limiting environmental importance, as is currently happening²⁵.

Although the debate in the last century had a result of the most obvious, putting human welfare before

²⁴ Although it establishes (again) as strategic objectives in the framework of protection of the marine environment “Reduce the intensity and area of influence of significant anthropogenic pressures” having, in its point of view “fishing with gear and bottom gear”. Thus, vine. Marine strategy of the levantine-balearic demarcation (Part V) p. 52.

²⁵ Casado Casado, Lucía. Crisis económica y protección del medio ambiente. El impacto de la crisis sobre el derecho ambiental en España. *Revista de Direito Económico e Socioambiental*, v. 9, p. 18-63, 2018.

environmental protection, which is reflected perfectly in the constitutional body, there is today, derived from social evolution, a livelier discussion on the subject that calls into question the mere utilitarian character of the environment in terms of resources and values, also, the dignity and essence of environmental encompassing²⁶. In this sense, it should not go too far in the legal landscape when we see, increasingly, environmental objectives that seek to reduce this trawling, among other practices that are economically viable but that due to their environmental disaster become socially rejected. It is emphasized, finally and on this issue, that the state and constitutional reality today, and as specified by the Spanish Constitution in its first article, is that Spain is constituted as a Social and Democratic State of Law. The direct consequence of this fact, which is difficult to assume at the legal level, but which is possible to observe, is the following: in the case of the Social State, compliance with the legal norms *per se* is not pursued, but the achievement of the objectives set when creating these legal norms²⁷. In short, it is an open question with a different sociological and legal solution and therefore difficult to resolve. However, the future reality passes through a more sustainable system of natural resources that allows guaranteeing human subsistence, which has as a consequence precept as article 40 of RD 502/2022 which determines that: “Public Administrations will contemplate actions aimed at encouraging the incorporation of equipment in vessels that limit or eliminate the impact of fishing activity on the ecosystem”.

4 Protection areas, closures, ceilings and fishing effort

4.1 The zoning of Mediterranean protection

In the framework of marine protection and the delimitation of protected sea exists an important tool that has its origin in article 33 NHBA, with the creation of Marine Protected Areas (MPA), which defines as “natural areas designated for the protection of ecosystems,

communities or biological or geological elements of the marine environment, including intertidal and submarine areas, which, because of their rarity, fragility, importance or uniqueness, deserve special protection”²⁸. Due to its characteristic protection, its delimitation and comparison with the objectives of maritime conservation proposed internationally by the 2030 Agenda, it is possible to affirm that the monitoring of MPAs by the Administrations or other organizations can result, in addition, in added benefits to those exposed normatively. In this sense, for example, it can provide valuable and useful information for these purposes of monitoring and resilience of the marine environment²⁹, which gives a glimpse of new possibilities for these areas that allow a higher margin of action and more environmentally beneficial than the one collected at the legal level if they know how to exploit them with intelligence. These MPAs have traditionally been the first instrument of protection exercised by the Fisheries Administration to favor and try to ensure the restocking of marine species, posing as protected areas when in fact they were measures of fishing closures or marine reserves³⁰. These areas shall be incorporated, as protected natural areas, and in accordance with the PMEA to the NMA SP which, in accordance with article 26 PMEA shall be constituted by these areas, as well as by other areas —such as the Natura 2000 network, or Special Conservation Areas, among others— These areas and the network itself shall be managed, in accordance with Article 28 PMEA, by the General State Administration. This aspect of interrelationship between protected areas places the network as a tool for habitat inventory that provides contrasted information and improves scientific knowledge while allowing the improvement of the control and the combined management of the different specialties of marine protection areas, which results in the possibility that the Administration can have, from the network, a

²⁶ Alli Turrillas, Juan-Cruz. *La protección de la biodiversidad*. Estudio jurídico de los sistemas para la salvaguarda de las especies naturales y sus ecosistemas. Madrid: Dykinson. 2016. p. 42.

²⁷ GALIANA SAURA, Ángeles. *La ley: entre la razón y la experimentación*, Valencia: Tirant lo Blanc, 2008. p. 211-212.

²⁸ The declaration and management of an MPA shall be made by the Autonomous Communities as long as it contains a maritime-terrestrial space and by the General State Administration when it is exclusively maritime as can be deduced from the articles 6 and 32.7 NHBA. *Vid.* Rodríguez Beas, Marina. El régimen jurídico de las costas. Especial referencia a la reforma de la ley de costas a la luz de la jurisprudencia del tribunal constitucional más reciente. *Revista Catalana de Dret Ambiental*, v. 7, n. 1, p. 1-50, 2016.

²⁹ Ortiz García, Mercedes, Las Áreas Marinas Protegidas: estrategias sanadoras y resilientes en la actual década clave. *Observatorio de Políticas Ambientales*, p. 736-753, 2021. p. 746.

³⁰ Ortiz García, Mercedes. Áreas marinas protegidas: avances en su conservación. *Observatorio de Políticas Ambientales*, p. 630-668, 2019. p. 632.

broad vision of the relational and individual needs presented by these areas³¹. The NMASP has a Master Plan which has been approved by Royal Decree 1056/2022 of 27 December, which approves the Master Plan of the Spanish Network of Marine Protected Areas and the minimum common criteria for coordinated and coherent management of the Network. It is important, in terms of fishing, to note that the new Master Plan divides the protected marine areas within the NMASP by categories and, depending about the sea, will be included within one or the other with different consequences for fishing. If there is a categorical restriction on fishing in general and therefore it is prohibited, it allows the activity in the following cases: Category II, concerning essentially undisturbed areas, to be understood as slightly altered but not too much, artisanal fishing is permitted; in category V, relating to areas with a distinctive character resulting from the interaction of nature and human society with ecological values, biological, cultural and landscape fisheries, and in which it is essential to maintain such interaction to ensure the conservation of its own values, artisanal fishing is allowed; and in category VI, Areas that maintain a natural character, declared for the conservation of ecosystems and habitats, together with cultural values and traditional methods of natural resource management. It promotes the survival of systems of use of traditional resources, and the promotion of social and economic development of local communities, as well as ensuring the maintenance of fish stocks, therefore extractive uses and professional and recreational fishing are allowed. These three cases must be, in accordance with the plan itself, of subsequent regulation to ensure that fishing is in line with the objectives of conservation of species.

In the fisheries sector, in addition to these areas for the protection of the marine environment, there are the fisheries protection zones which are, because of the special characteristics of the marine environment, suitable for the protection, regeneration and development of fishing species, in which the use of certain fishing gears may be limited or prohibited. These zones, in accordance with Article 21 SFFRA, shall be divided into three categories:

³¹ Navarro Ortega, Ascensio. Las áreas marinas protegidas en España: una visión de conjunto. *Revista Catalana de Dret Ambiental*, v. 10, n. 2, p. 1-45, 2019. p. 39.

A. Marine reserves. As required by Article 22 of the SFFRA, these are “those areas considered suitable for the regeneration of fishery resources because of their special characteristics, contributing to the preservation of the natural wealth of certain areas, the conservation of different marine species or the recovery of ecosystems, the rearing of marine species of fishing interest or where there is a threat to the fishery resources or a deterioration that justifies the creation of this figure because it cannot be solved by other protection figures. Protective measures shall determine the limitations or prohibitions, if any, of the exercise of the fishing activity and any other activity likely to alter the natural balance”. These protection zones may be included within the SNMPA. These areas must also be defined with different levels of protection and regulation of uses, and there must be at least one in which all human activities except research are prohibited. It is understood that these areas will be divided according to the above categories of the SNMPA Master Plan.

B. Areas of marine conditioning. In these areas, as provided for in Article 23 SFFRA, facilities may be set up to promote the reproduction and protection of fishery resources, including artificial reefs.

C. Habitat restoration areas of interest to fisheries. These zones, so called by Article 22 SFFRA but named by Article 24 SFFRA according to the old nomenclature of Article 16 SSFA –marine restocking areas– intended for the controlled release of species to restock. In addition, special fishing rules shall be established in these places, specifically prohibiting the release of non-native species or subspecies –without being necessary that they are invasive as extracted from the articulated–³². It

³² There is a need for a well-managed plan and for widespread monitoring of the area since there have already been serious problems with coastal waters and the release of species. Thus, Brufao Curiel, Pedro. Las especies exóticas invasoras y el derecho, con especial referencia a las especies acuáticas, la pesca recreativa y la acuicultura. *Revista Catalana de Dret Ambiental*, v. 3, n. 1, p. 1-54, 2012, notes that, with the aim of improving fishing, private individuals and even administrations have been given releases of invasive alien species that improved fishing in the short term but, in the long term, caused serious damage to ecosystems. The author also recalls that if the release of species is reduced only to farmed fish released for subsequent fishing, it only contributes to decimating the State coffers to enlarge those of the fisheries. That is why a subsequent plan in each area, well-reasoned and managed, is essential in these cases. Also, and due to the rise of recreational fishing, it is also possible that as warned Expósito-López, Oscar. Régimen jurídico-administrativo y gestión de especies exóticas invasoras en España. *Revista de Direito Económico e Socioambiental*, v. 12, n. 3, p. 432-490, 2021. p. 482,

also appears that, in accordance with article 24.6, there is a plan to develop “breeding or propagation programs, in their potential natural habitat or where they have disappeared from marine species subject to fishing activity”. This aspect is interesting for the restoration of a healthy and balanced environmental system.

In short, maritime zoning, which seeks to remove intensive and destructive fishing from areas of high risk for marine biodiversity, is introduced in a timely manner and with the aim of increasing its intensity in line with the overall trends of restricting human activity except in certain areas by encouraging traditional fishing gear elsewhere³³.

4.2 Closures, ceilings and sizes

The closures, according to the interpretation that can be made of Article 19 SFFRA, are limits or prohibitions to fishing activity, the limitation of minimum funds³⁴ or the capture of certain species as well as other means deemed necessary in a particular area or area of the seabed. This ban may limit the permitted fishing gears and their validity, monitoring, and effectiveness. The legal regulation of this concept and its possibilities has evolved since its adoption to the present day, being currently in force the article 14.2 SFFRA that admits the possibility of taking measures of conservation of fishery resources establishing temporary closures. In line with this, but with a novel and marked environmental character, article 7.1 of RD 502/2022 authorizes the Minister of Agriculture, Fisheries and Food, if necessary and in the interest of protecting marine life and its ecosystems, to “establish temporary closures and maximum catch ceilings for certain species or vessels, following previous reports by the Spanish Institute of Oceanography and the affected coastal autonomous communities, and after hearing the representative entities of the fishing sector”. This regulation could be understood as an evolution of the possibility of closures for conservation of fishery resources without leaving its core to provide it with greater environmental

there is the possibility of such releases in order to promote tourism, which has positive effects in the short term on the specific area but in the long term kills its biodiversity and that of the village areas.

³³ This is how Mercedes Ortiz García, Mercedes. *Áreas marinas protegidas: avances en su conservación. Observatorio de Políticas Ambientales*, p. 630-668, 2019. p. 652.

³⁴ Novelty, the minimum funds, compared to the previous regulation.

and marine awareness. Therefore, purely environmental protection now becomes a possibility to establish closures, which before this normative implementation could cause some doubts.

For their part, the ceilings should be understood technically as the Total Allowable Catch (TAC), whose purpose is to establish fishing limits in a certain period of time of a species under a management plan³⁵, so that there is effective control over the real state of ecosystems and marine life. This concept has one of those rare qualities difficult to find in the legal world: practical unanimity on the desirability of its establishment. Its formulation is based on keeping fishing within a reasonable profit margin, extracting as much fish as possible within a range that allows the sustainable regeneration of fishing grounds³⁶. At European level the quotas are distributed in the form of national quotas which depend on a percentage of allocation per country depending on the marine population³⁷. Justifying all of the above, it is possible to refer to Recital 4 of Council Regulation (EU) 2021/92 of 28 January 2021, which determines that TACs will be fixed in accordance with Regulation (EU) No. 1380/2013, following scientific recommendations and taking into account biological and socio-economic aspects. It is possible to find, according to Barrio García, two types of TACs depending on the scientific criteria on which they are based for the establishment of these totals: analytical, based on scientific reports, and precautionary measures, which are applied on the basis of the precautionary principle³⁸ where such specific scientific assessments are not available in order to achieve a quantitative or at least stabilization reduction in catches³⁹.

³⁵ This is defined by the Oceana Foundation on its website, where it also warns that scientific recommendations should be taken into account to establish these ceilings, which, it warns, are systematically ignored and results in overexploitation of fishery resources in many cases: Disponible en: <https://europe.oceana.org/es/total-admissible-de-capturas-tacs/>. Acceso en: 11 enero, 2023.

³⁶ BARRIO GARCÍA, Gonzalo A. *Régimen jurídico de la pesca marítima*. Madrid: Marcial Pons. 1998. p. 319-322.

³⁷ The Ministry of Agriculture, Fisheries and Food also offers the possibility of consulting the ceilings for 2020 and 2021, but not for 2022. They can be consulted at the following link: Disponible en: <https://www.mapa.gob.es/es/pesca/temas/cuotas-espanolas/>. Acceso en: 11 enero, 2023.

³⁸ That, as stated in Article 4.7 SFFRA, one of the general principles to be taken into account in fisheries is: “The precautionary principle in order to ensure an exploitation of fishery resources that restores and maintains populations of harvested species above levels that can produce the Maximum Sustainable Yield”.

³⁹ BARRIO GARCÍA, Gonzalo A. *Régimen jurídico de la pesca ma-*

Finally, as regards the minimum sizes are those which establish the minimum length that fishing must have from head to tail and that serves to protect immature fish so that it is expected that eventually the number of fish available in the area will increase due to increased reproductive capacity. Regulating these sizes results in a loss of short-term benefits that can harm the fishing sector but that, in the long term, achieves an increase in the population that increases, in turn, the fishing capacity and biodiversity of the area⁴⁰. It is argued, therefore, that the regulation of minimum sizes has a long-term beneficial effect in economic and environmental terms, which is a highly beneficial tool that has already been implemented. At Spanish level these sizes are regulated by Royal Decree 560/1995, of 7 April, which establishes the minimum sizes of certain fishing species. Article 1 already directs the Annexes to the consultation of the minimum sizes which may be transported and marketed, otherwise prohibited by Article 3. In the Mediterranean area, in particular, the sizes are marked by Annex II on the minimum sizes authorized for the Mediterranean fishing zone. In case the vessel catches specimens with sizes or weights that are not in accordance with the regulatory limits, Article 18.2 SFFRA clarifies, in a categorical manner, that they must be returned directly to the sea, unless a specific rule provides otherwise. Where this obligation exists to keep species on board, despite their size and weight, Article 18.3 SFFRA provides that “they must be kept on board, declared and landed and, where appropriate, marketed under the conditions laid down”. It is understood that this is the case, for example, when the fishing of invasive alien species, which could not be returned to the sea as determined in article 7.3 of Royal Decree 630/2013, of 2 August, regulating the Spanish Catalogue of invasive alien species⁴¹, being that this involuntary fishing would enter into the mechanical control actions of these species⁴².

4.3 Limitation of fishing effort

New to the administrative control power in the field of sustainable fisheries is the regulation of fishing effort. This can be understood as defined in Article 3.12 SFFRA as “the intensity with which the fishing activity is exercised, measured as the time of activity of the same and other parameters, in particular the capacity of the vessel, that may affect its fishing intensity. The fishing effort of a group of vessels shall be the sum of the fishing effort of each vessel”. That is, the impact of a fishing vessel on the sustainability of the marine environment derived from its time of activity and ability to accumulate fish on each of its voyages, this being a value that must be added individually by each vessel. These limitations can be seen from certain areas. First, Article 12.1 SFFRA provides that where the area of a given fishery⁴³ the fishing effort in it may be limited by order of the head of the Ministry of Agriculture, Fisheries and Food, requiring a special fishing authorization to carry out the activity in that area. Second, Article 16 SFFRA, dedicated exclusively to this legal entity, determines that also by order of the head of the Ministry of Agriculture, Fisheries and Food the following measures may be taken, always according to scientific information, as regards fishing effort: a) Limit vessels in relation to the impact they have on the whole fleet in a fishery; b) regulate fishing time; c) adjust fishing capacity and d) regulate gear characteristics to modulate discipline in each specific case. These limitations make sense on the basis that the fishing effort is the sum of the capacity, time, and incidence components, all variable and dependent on the fishing gear used by the vessel. These limitations should also be understood as exceptional for specific cases, but as will be seen below, there will be other general ones, understood depending on the fishing grounds.

In this sense, Title V of the SFFRA regulates measures for the management of fishery resources. Within this, Article 31 deals with the concrete casuistry that may be carried out to limit this fishing effort. These measures, however, will have to be developed later by regulations of State rank. In accordance with article 31.2, these Royal Decrees may be supplemented by the following mechanisms already provided for in the

ritima. Madrid: Marcial Pons. 1998. p. 320-322.

⁴⁰ Ross Salazar, Erick; Alfaro, Jorge Félix. *Guía de conceptos y procedimientos orientados hacia una pesca responsable*. San José: Fundación Mar-Viva, 2014. p. 34-35.

⁴¹ “Specimens of the animal and plant species included in the catalogue that are extracted from nature by any procedure may not be returned to the natural environment”.

⁴² In this sense, *vid.* Expósito-López, Oscar. Régimen jurídico-administrativo y gestión de especies exóticas invasoras en España. *Revista de Direito Económico e Socioambiental*, v. 12, n. 3, p. 476-478, 2021.

⁴³ According to Article 3.16: “exercise of the fishing activity directed to the capture of a population, species or group of species in a given zone or fishing zone and with a given modality”.

law: 1. Allocation of fishing opportunities by vessels or groups of vessels; 2. Transmission between vessels of allocated fishing opportunities; 3. Joint management of fishing opportunities allocated by vessels; 4. Cessation of fishing activity in the event of quota exhaustion; 5. Closure of fisheries; 6. Flexibility mechanisms in the management of fishing opportunities; 7. Rationalization mechanisms in the management of fishing opportunities; 8. Optimization mechanism in the management of fishing opportunities; 9. Stocks of fishing opportunities; 10. Exchanges of fishing opportunities with other States; 11. Management of unused fishing opportunities; 12. Specific and special measures, the exceptional nature of which is justified by the state of the resources; 13. Monitoring the consumption of fishing opportunities by computer.

In this way, the subsequent Royal Decree that enters to deal specifically with limitations by fishing effort, may be based on all these mechanisms mentioned and developed throughout Title V. Ultimately, the limitation of fishing effort is configured as a new system of prior control that seems to have the intention of being a key player in the legal configuration of sea fishing to ensure the sustainability of the seas in the coming decades. However, it is necessary to see the results of the application of this standard to observe results, for which it is necessary time and good administrative.

5 Administrative control of mediterranean fisheries

The control on fishing, being an activity carried out at sea, is tremendously complex, which is why it is difficult for an Administration to have the ability to control the activity on site and its correction. It appears that the legislator therefore considers it necessary for the power of administrative control to be expressly strengthened in actions which are possible in addition to imposing controls which are difficult to comply with, but which may have a deterrent effect. In this sense, it is possible to catalog the controls in two ways: *ex ante* and *ex post*. In *ex ante*, for the subject matter under consideration, the first stumbling block lies in the general requirement of Article 7.1 of the SFFRA, which establishes as an indispensable requirement that vessels flying the flag of Spain be able to access fishery resources, must be in

possession of a fishing license, be registered in the General Register of the Fishing Fleet and must belong to a fishing zone and a fishing method. Once this general requirement is met, the following means of *ex ante* control are observed: authorizations⁴⁴, limitations and prohibitions. In the area of fisheries and environmental protection, they use the casuistry mentioned above and the marine protection areas, as they are a tool that allows to limit the freedom of fishing from before it occurs in order to control the activity to pursue the objectives set. It is in this sense that article 14.2 SFFRA considers that “conservation measures” are the limitation of the volume of catches, the regulation of fishing effort, the regulation of sizes and weights, the regulation of gears and the establishment of closures. However, these matters have already been dealt with extensively in the previous points, both as regards fishing gear, fishing limitations and protection areas, therefore the *ex post* control, the one dedicated to the surveillance of the activity already carried out so that the Administration can ensure that it has been completed with due diligence and regulatory correctness in the course of the fishing, must now be exposed. For this inspection function, the Public Administration has a series of planned actions, which will vary depending on the idiosyncrasy of the activity and the art to be controlled and based on actions to verify compliance with current regulations, especially the most technical⁴⁵. The *ex post* control may be divided into two flanks: deterrence activities, which are inspections carried out by officials or authorized personnel for that purpose, and that it would have a deterrent element in the knowledge of the potential person concerned that at any time the administrative inspection authority may be vested in him and, in the other hand, sanctions, which have a preventive and repressive role, so as to warn of the possibility of punishment for non-compliance with regulations and effective repression in the event that this anti-legality has been consummated⁴⁶.

⁴⁴ In this sense, as already mentioned, there is the special fishing, but there are also regulatory developments such as the authorization to obtain marine flora (art. 28 SFFRA).

⁴⁵ In this sense, Bermejo Vera, José. La Administración inspectora. *Revista de Administración Pública*, n. 147, p. 39-58, 1998. p. 40-41, identifying *ex post* controls with “actions, more or less generically provided for in the legal system, which enable public administrations to carry out functions of verification or verification of compliance with the legislation in force, in its broadest sense, that is, including in particular technical conditions and requirements, inherent consequence of the imposition on certain persons, activities, installations, objects and products of certain legal rules”.

⁴⁶ BLANQUER CRIADO, David. *La inspección (de actividades autori-*

5.1 Inspections for the control of fishing legality

As regards inspections, these shall be carried out by officials who shall be given the status of an official of the authority, in accordance with Article 38 SSFA⁴⁷. They may carry out the inspection function in the port, on the quay or at sea, as provided for in Article 39, so that there is a sufficiently wide scope for administrative inspection, making resources more problematic than capacity. In this regard, the Ministry of Agriculture, Fisheries and Food has the following own resources for control and inspection tasks⁴⁸: four helicopters, three fixed-wing aircraft, four deep-sea patrol vessels (although the Ministry only gives the names of three), and six light patrol vessels (mainly used in inland fisheries and therefore excluded from Mediterranean protection). It should be noted that, apart from its own resources, it also has cooperation agreements with the Ministry of Defense and the Civil Guard in respect of these tasks. However, the territorial extent of fishing grounds in a peninsular country with archipelagos does not seem, as is mentioned, sufficient resources to obtain effective action. The reality is that it is ultimately the police force⁴⁹ that is responsible on most occasions for carrying out checks arising from cooperation agreements with the Ministry of the Interior, so that they are the ones who carry out, on a regular basis, the inspections and the control of the fulfillment of the obligations of the SSFA, being that, for example in 2019, 8,617 inspections took place, of which 5,577 were carried out in the port, 1,126 were made at sea and 1,914 were aerial (sightings)⁵⁰.

In this sense, Article 95 SSFA clarifies that the instruction or control of the activity in external waters, and in the framework of a sanctioning procedure, may consist of the examination of: documents, books, master and ancillary accounts, files, invoices, supporting documents, correspondence for research purposes, computer databases, software, records and computer

zadas o comunicadas). Valencia: Tirant lo Blanc. 2018. p. 56-59.

⁴⁷ Civil servants in this regard shall be in accordance with article 2 of Royal Decree 176/2003.

⁴⁸ Information extracted from the ministry's website: Disponible en: <https://www.mapa.gob.es/es/pesca/temas/vigilancia-pesquera/medios-control-e-inspeccion/>. 03 enero 2023.

⁴⁹ The Civil Guard Maritime Service collaborates in this regard (SERMAR), the Civil Guard Air Service and the Nature Protection Service (SEPRONA).

⁵⁰ *Vid.* Informe anual de la actividad de la flota pesquera española. 2020. p. 10.

files relating to economic activities, as well as in the inspection of goods, equipment, holdings and any other background or information to be provided to the administration or necessary for the requirements of the obligations laid down in the rules on fishing and marketing of fishery products. This wide range is complemented by the possibility for officials to enter the vessels' units and places where fishing activity may be related, provided they are not recognized as domicile, for which the consent of the affected person or judicial authorization will be required. Also, if the communication of the inspection may be detrimental to the success of the investigation, officials need not report their presence.

5.2 Penalties for fishing and marine protection

Also, if the communication of the inspection may be detrimental to the success of the investigation, officials need not report their presence. Therefore, with regard to fishing gear and environmental protection, which are strongly linked by the impact of the former on the latter, it is necessary to make a brief review of what the legislator considers harmful to marine life and that it is worth sanctioning⁵¹.

The second paragraph of Article 96 SSFA establishes a series of serious infringements relating to the protection of species, as follows: "a) The performance of any activity detrimental to the management and conservation of marine living resources, as well as underwater activities without authorization in those areas where it is required under current regulations. b) Marine restocking without authorization or where the conditions laid down therein are not met. c) The holding, before the first sale of fish species caught without the necessary authorizations or under conditions other than those laid down therein. d) The catch and holding, before the first sale of unauthorized species or of which total allowable catches (TACs) or quotas have been exhausted. e) The possession, before the first sale of species of size or weight less than the regulatory or, if applicable, when the margins allowed for certain species in the current

⁵¹ Although it does not go into depth as the fishing sanction procedure is not the subject of the study, only the fishing sanction as an ex post control mechanism for fishing activity as regards environmental protection, there is a specific sanctioning procedure for this matter. *Vid.* Real Decree 182/2015, of March 13, adopting the Rules of Procedure for the system of penalties for sea fishing in external waters.

legislation are exceeded. f) Failure to comply with the rules on maximum permitted catches. This failure will result in a fine of EUR 301 to 60,000 (Article 106.1 SSFA) and the confiscation of the products obtained and of fishing gear, gear, tools, instruments, or equipment (Article 106.2.f) and those other actions provided for serious sanctions such as the suspension of authorizations (art. 106.2.h)) or the immobilization of the ship (art. 106.2.k)), among others. At first glance, it seems to be an economic sanction scale that distinguishes between a minor error or an oversight, with a low sanctioning rank, and a deliberate and conscious attitude, with a proportionally high range with respect to the lower penalty. However, and taking into account the benefits and capacities of large fishing companies, without entering to value small fishing vessels, it seems that the protection of the marine environment in this case, by classifying it as serious and with that sanctioning scale, it may prove to be sufficiently economical and profitable to be worth the risk, as it should be remembered that in the Mediterranean alone, trawling reaps benefits of more than EUR 100 million per year. Regarding the penalties arising from infringements (art. 42 of RD 502/2022), it can be said that doubts may arise on this aspect, since infringements as such are not included in the norm, but prohibitions as regards fishing gear, as has already been mentioned in some cases, such as in trawling. That is why, in the absence of a clear reference to the infringement or the gravity of the penalty, an interpretation should be made of Article 100 SSFA, to which Article 42 itself refers, so that these breaches of the prohibitions are included as more precise definitions of some of the assumptions in Article 100.4 concerning gear, fishing gear, tools, instruments and equipment where these legally prohibited concepts can be clearly reflected in RD 502/2022.

There is the possibility, under Article 97 of the SSFA, that the authorities may adopt provisional measures when they become aware of an alleged infringement. These measures shall be designed to ensure that the subsequent sanction can be guaranteed, so that they may only cover ancillary sanctions which, being those of marine protection classified as serious, must respect this premise when approving interim measures.

However, the annual indicators on fisheries sanctions appear to show that either marine protection is effectively complied with at the legal level or, for whatever reason such sanctions are not applied even though

the conservation indicators for Mediterranean species are truly devastating. In this regard, the reports of the Ministry of Agriculture, Fisheries and Food highlight that 90% of the sanctions derive from non-compliance with article 100.2.c) SSFA: “Not to complete the Logbook or the landing declaration, or to do so by altering the data relating to catches, fishing effort, geographical position of fishing sets or in breach of the rules in force”. Being its origin, in the vast majority, a sanctioning procedure initiated by the Guardia Civil⁵² not even 1000 procedures per year. It should be stressed that these figures are due to the police work and not to surveillance imposed by the Administration.

Finally, it should be noted that in the proceedings that violate the rules of the SFFRA, and because, in large part, they replace the rules of the SSFA, the sanctioning regime of this second rule as provided for in Article 55 SFFRA will apply.

5.3 On illegal fishery, undeclared and unregulated

Finally, and this being one of the major concerns of the legislator at present in sustainable fisheries, because of this is a preliminary bill on administrative control in this area, a brief analysis of the status of this area should be made. To this end, a conceptualization is necessary to delimit the material scope and to know specifically what the terms of illegal, uncommunicated, and unregulated fishing refer to. Although all these concepts are usually put together, it is possible to differentiate them because illegal fishing is carried out in the Exclusive Economic Zone without license or authorization or those that carry out fishing in violation of the specific regulations of the country. If fishing takes place on the high seas, illegal fishing would be deemed not to have in force the license of the Regional Fisheries Management Organization or not to respect international regulations; unreported fishing shall be unreported and declared, so that it cannot be counted in the resource management framework or know where the catch was made; the unregulated is that carried out on the high seas by a vessel without nationality or license and which does not respect the management rules⁵³. This type of fishing is, at

⁵² *Vid.* Annual report on the activity of the Spanish fishing fleet. 2020. p. 10.

⁵³ Morelle Hungría, Esteban. La pesca ilegal como actividad delictiva: una aproximación a la problemática española. *Actualidad Jurídica*

the administrative level, a problem that causes evasion of fees, taxes, authorizations, and licenses⁵⁴ and a lack of control of natural resources important enough to unbalance calculations and put at risk the environmental reality and management of the seas with the ignorance of the Administration.

Realizing the harmfulness of these practices, the legislator included, through Act 33/2014, of 26 December, amending Act 3/2001, of 26 March, on State Sea Fishing, Article 40bis as a mandate to the executive to carry out more comprehensive control over illegal, unreported, and unregulated fishing. In the first paragraph, you are invited to take “the control and inspection measures necessary to ensure that products imported and exported from Spain [...] do not originate from illegal, unreported and unregulated fishing”, así como se promoverán, de acuerdo con el apartado tercero “las acciones necesarias para disuadir eficazmente a los nacionales españoles de realizar operaciones de pesca ilegal, no declarada y no reglamentada, o facilitar su realización por buques abanderados en terceros países que faenen fuera de las aguas comunitarias”. However, despite this clear mandate, no new measures are actually proposed to prevent it, but the witness is passed on to the executive so that it is he who decides how to act, so that the article results in a declaration of intent to declare war on illegal fishing, but not an effective remedy to combat it.

With regard to sanctions, the legislator, as mentioned, is very interested in ending these practices in a way that characterizes as a very serious violation in its article 104.c:

any conduct characterized as serious, if it involves a breach of obligations under international treaties or third country rules, which are related to fishing activities of stateless vessels, vessels flying the flag of countries which are regulated as flags of convenience or third country vessels identified by Regional Fisheries Management Organizations or other international organizations for illegal fishing activities, unreported and unregulated or contrary to measures for the conservation and management of fishery resources.

Since there are only three offences of this rank in the law, the importance given by the legislator to sanc-

tion these practices is considerable. However, the flag factor of the vessel should be highlighted as a requirement for “very serious” conduct, so that, again, emphasis is placed on the factor of social and political damage to the country over environmental. This may be due, in part, to the fact that States want to know which country is the flag of the vessel committing these harmful practices and the actual nationality of its members, so that it knows to which international body or interlocutor to address the problem, fact much more complicated, not to say impossible, in the case of ships with stateless flag, flag of convenience, or others that reiterate in their activity⁵⁵.

Finally, it can be argued that it will be necessary to wait for the modifications of the previously mentioned preliminary project on the control of illegal fishing, unreported and unregulated to see the new sanctions and inspections package that is approved to try to end these practices, making this an open and constantly evolving issue.

6 Conclusions

First, and as a purely technical aspect of good legal practice, the fact that the legislator again intends to dissect an existing law should be highlighted and to adopt three new rules to complement it, instead of incorporating these new regulatory proposals into the State’s Maritime Fisheries Act. It is incomprehensible that, at a time of regulatory hypertrophy such as the current one, the legislator actively contributes to the dissection and dispersion of regulations rather than attempting to reorganize the legal system into extensive and well-organized rules, which would give the system a lesser possibility of contradiction and would result in a long-term benefit for the lawyer and the citizen who need to navigate the norm for the exercise of their activity or their rights.

Secondly, and regarding the objectives of the 2030 Agenda, the standards analyzed and their recent evolution —as well as their plans— seem determined to be

Ambiental, n. 74, p. 7-32, 2017. p. 11.

⁵⁴ Morelle Hungría, Esteban. La pesca ilegal como actividad delicativa: una aproximación a la problemática española. *Actualidad Jurídica Ambiental*, n. 74, p. 7-32, 2017. p. 15.

⁵⁵ ARENAS MEZA, Miguel. La responsabilidad del Estado del pabellón frente a la pesca ilegal, no declarada y no reglamentada. In: JUSTE RUIZ, José; BOU FRANCH, Valentin (dir.); SANCHEZ PATRON, José Manuel (coord.). *Derecho del y mar y sostenibilidad ambiental en el Mediterráneo*. Valencia: Tirant lo Blanc, 2014. p. 250.

on track to meet the objectives, at least nominally. In this sense, there is the intention to create a specific regulation on the control of illegal fishing, which is a clear step to combat this harmful practice, and, on the other hand, environmentally harmful fishing gear is increasingly limited by the establishment of marine protected areas. It seems, therefore, that there is a regulatory pace that is improving the situation of marine biodiversity protection. However, there are doubts as to whether all these mechanisms are, once again, applicable at the practical level and whether the targets set will be met due to resource constraints.

Thirdly, and turning to the environment and fisheries proper, it is clear that at present fishing and its sustainability over time is a problem, not only environmental, a matter that concerns only a part of the population that is aware of the issue, but also economic and social, since a sea without fish implies an increase in the price of fish and the massive loss of jobs, as well as the bankruptcy of countless companies. It is therefore an area of great concern to the Mediterranean countries and therefore requires strong and effective action to mitigate the damage as soon as possible. To this end, administrative checks must be carried out before and after the fishing activity which will have an effect on the time that, if they result in the fulfilment of the objectives set, can solve the problem and turn fisheries into a sustainable economic system. Prior checks seem to be increasingly reinforced and there is a clear commitment to them, to the detriment of subsequent. This fact is understandable and results from the lack of resources that can be used for this purpose, since the use of boats, helicopters and aircraft to control sustainable fishing seems an extremely abysmal expense for the benefits that it can bring, so that the fishermen, aware of this fact and the complication of an inspection at sea, are prepared to resolve all their problematic issues at sea, before arriving in port and being accountable. Therefore, an increase in *ex ante* controls seems an appropriate and appropriate solution with the establishment of new areas and sub-areas of fisheries protection in critical places and previously studied to place a strategic map of sustainable fishing in time. This is the path that the Spanish legislator seems to want to follow, as can be seen by the inclusion of the limitations of fishing effort, which has great capacities in a subsequent regulatory development inspired by more technical and scientific criteria. In addition to these *ex ante* controls, there are

also developments in the area of sizes, quantities and temporary closures which are being modified over time to improve this system of sustainability and which act as a deterrent that can work, including within this the novel limitations as regards fishing gear and included in RD 502/2022. However, however harmful trawling is, as has been pointed out, the benefits it brings are incomparable with other gear, which makes it impossible for the State to ban it if it wants to remain competitive in the fishing economy, for most other states will not forbid it with the same thought. Consequently, marine protection in the Mediterranean results in a complex and continuous weighting between the environment and the economy, resulting in an increasingly evident approximation of positions and, significantly, follows a pace quite close to the constitutional debate that exists in Spain for decades on this same issue.

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