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EVALUATION

Council Regulation No 734/2008

on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears

{SWD(2025) 6 final}

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GLOSSARY

Acronym	*Meaning*
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CECAF	Fishery Committee for the Eastern Central Atlantic
CFP	Common Fisheries Policy
DSAR	Regulation on establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic
FAO	Food and Agriculture Organisation
GFCM	General Fisheries Commission for the Mediterranean
IUU	Illegal, Unreported, Unregulated fisheries
NAFO	Northwest Atlantic Fisheries Organisation
NEAFC	North-East Atlantic Fisheries Commission
RFMO/A	Regional Fisheries Management Organisation/Arrangement
SEAFO	South-East Atlantic Fisheries Organisation
SIOFA	Southern Indian Ocean Fisheries Agreement
SMEFF	Regulation on the sustainable management of external fishing fleets

SPRFMO	South Pacific Regional Fisheries Management Organisation
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly
VME	Vulnerable Marine Ecosystems
VMS	Vessels Monitoring System

1. INTRODUCTION

1.1 Purpose and scope of the evaluation

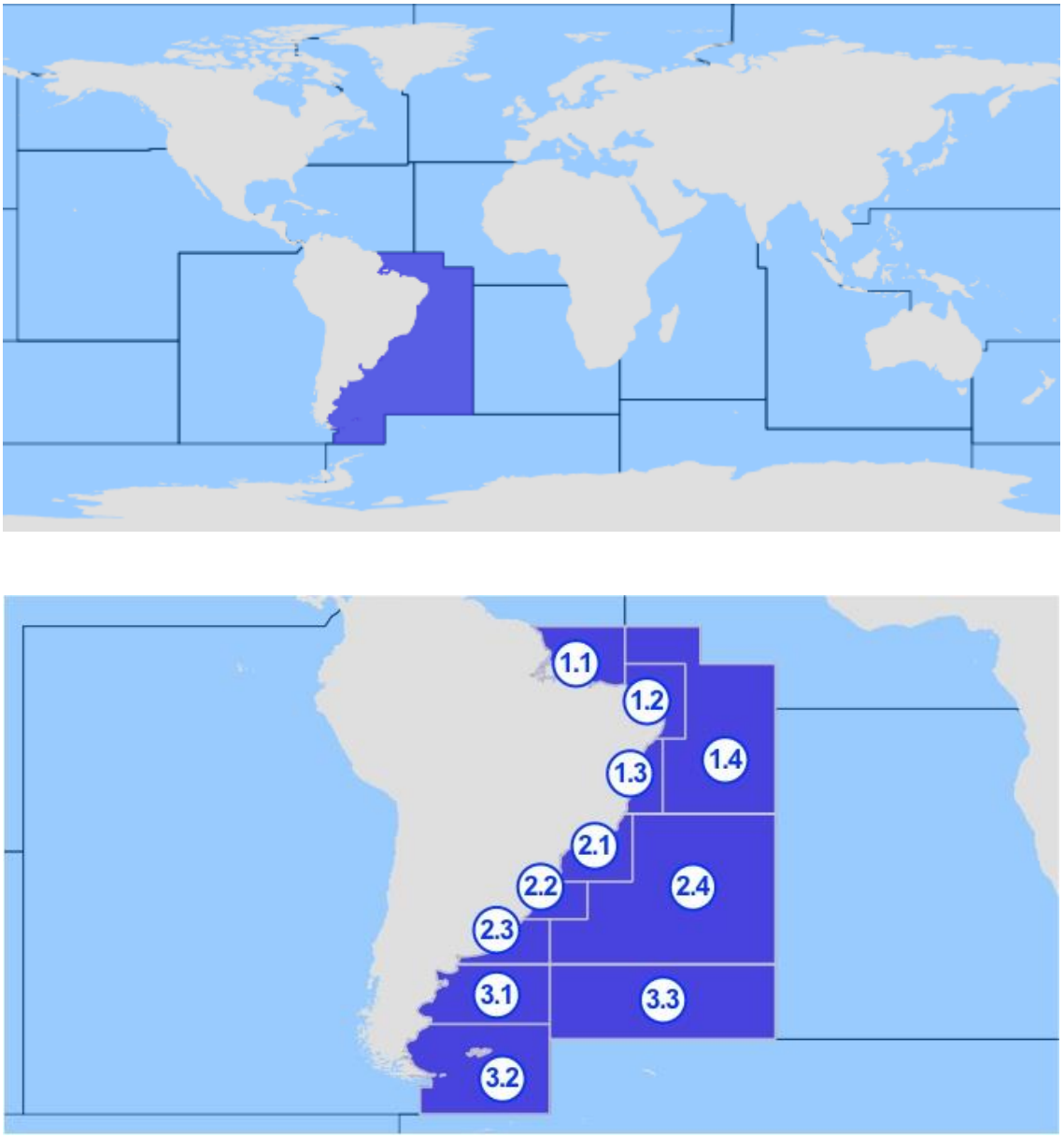
In June 2008, the Council of the European Union adopted Regulation (EC) No 734/2008[1] (hereafter: the VME Regulation) on the protection of vulnerable marine ecosystems (VMEs) in the high seas from the adverse impacts of bottom fishing gears. Its purpose was to implement into EU law the measures contained in the United Nations General Assembly (UNGA) Resolution 61/105 for vessels flying the flag of its Member States, for those areas of the high seas where there is no Regional Fisheries Management Organization or Arranegement (RFMO/A).

More specifically, the VME Regulation applies to EU vessels carrying out fishing activities with bottom gears in the high seas in areas that are not under the responsibility of a RFMO/A with competence to regulate such fishing activities or where no process for the establishment of a RFMO/A is under way and where no interim measures to protect VMEs were put in place during negotiations for the establishment of a RFMO/A. As such, in practice, the main area where the VME Regulation applies is the Southwest Atlantic Ocean (FAO Area 41).

Apart from the limited geographical area, only a very small number of Member States are concerned by the application of the VME Regulation, which, over the course of years between 2008-2023, amounts to up to five Member States. However, out of these few Member States only a couple have undertaken fishing activities with bottom fishing gears in the Southwest Atlantic Ocean systematically. Indeed, the EU fleet operating in this area is almost exclusively represented by Spanish trawlers over 40 m consisting of around 19 vessels.[2] More information are provided further below.

[1] Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears.

[2] Durán Muñoz, P., Sacau, M., Vidal-Liñán, L., Sarralde, R., Del Rio, J.L., Guijarro, B., Ordinas, F., García Isarch, E., Martín-Sosa, P., Rodríguez, R., Saborido, F., Moir Clark, J., Kell, L., Hunt, G. and Mangi, S., Improving environmental sustainability of deep sea fisheries with emphasis on the conservation of Vulnerable Marine Ecosystems (VMEs), Publication Office of the European Union, 2023, doi 10.2926/854134, p. 1086. Improving environmental sustainability of deep sea fisheries with emphasis on the conservation of Vulnerable Marine Ecosystems (VMEs) - Publications Office of the EU (europa.eu)



Area 41 – Southwest Atlantic[3]

The VME Regulation establishes that the competent authorities of an EU Member State can only issue special fishing permits for the use of bottom fishing gears on the high seas if specific conditions are met. According to the VME Regulation, 'bottom gears' means gears deployed in the normal course of fishing operations in contact with the seabed, including bottom trawls, dredges, bottom-set gill nets, bottom-set longlines, pots and traps.[4] Member States are obliged to carry out an assessment of the potential impacts of the vessels' intended fishing activities and can only issue a special fishing permit after concluding that such activities were not likely to have significant adverse impacts (SAIs) on VMEs. The use of bottom gears is prohibited in areas where no proper scientific assessment has been carried out and made available. The VME Regulation also contains

[3] Area 41 – Atlantic, Southwest (europa.eu)

[4] Article 1(c).

provisions on unforeseen encounters with VMEs, area closures, and an observer scheme for all vessels which have been granted a special fishing permit.

Since the adoption of the VME Regulation in 2008 there have been various relevant developments at United Nations (UN) level, in particular, the adoption of the Food and Agriculture Organisation (FAO) International Guidelines in 2009 with regards to the protection of vulnerable marine ecosystems and the long term management of deep-sea fisheries in the high seas and several reviews of UN General Assembly (UNGA) Resolutions on sustainable fisheries (i.e., Resolution A/RES/64/72 in 2009; Resolution A/RES/66/68 in 2011; Resolution A/RES/71/123 in 2016, and Resolution A/RES/77/118 in 2022).

At EU level, two Regulations under the Common Fisheries Policy, the Regulation on the sustainable management of external fishing fleets (EU) 2017/2403 (SMEFF)[5] and the Deep-sea Access Regulation (EU) 2016/2336 (DSAR)[6] are especially connected to the VME Regulation. The SMEFF Regulation strengthened the framework under which authorisations are granted to EU vessels desiring to fish outside of EU waters. The DSAR has set out rules to regulate fishing for deep-sea stocks in the Union waters of the north-east Atlantic and in the international waters within the area of competence of the CECAF.

As provided for in Article 13 of the VME Regulation, an assessment of the implementation of the Regulation was carried out by the Commission and a report was communicated to the European Parliament and the Council in 2010.[7] The Commission concluded in its report that it was necessary to amend the VME Regulation to bring it in line with the developments that were taking place at that time so that enhanced measures for the protection of vulnerable marine ecosystems, based on the most up-to-date scientific advice, can be put in place to ensure their protection. Several recommendations for amendments were included in the report, such as proposals concerning the scope of the VME Regulation, the limitation of capacity or effort, impact assessments prior to the authorisation of bottom fishing, the definition of unforeseen encounters with VMEs, and changes to the move-on rule[8] and observer coverage.

The Commission intended to amend the VME Regulation by the beginning of 2012. However, the process was postponed pending the review of the bottom fishing provisions

[5] Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008, Official Journal, L347, pp. 81-104.

[6] Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002, Official Journal, L354, pp 1-19.

[7] Report from the Commission to the European Parliament and the Council on the implementation of Council Regulation (EC) No734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears EUR-Lex - 52010DC0651 - EN (europa.eu)

[8] "A move-on rule is based on the premise that a fishing vessel will move a minimum distance from a location where species indicating the presence of a VME are captured by the gear". Peter J. Auster, Kristina Gjerde, Eric Heupel, Les Watling, Anthony Grehan, Alex David Rogers, Definition and detection of vulnerable marine ecosystems on the high seas: problems with the "move-on" rule, *ICES Journal of Marine Science*, Volume 68, Issue 2, January 2011, Page 257, https://doi.org/10.1093/icesjms/fsq074 . Article 7 of the VME Regulation stipulates that *"where, in the course of fishing operations, a fishing vessel encounters a vulnerable marine ecosystem, it shall immediately cease fishing, or refrain from engaging in fishing in the site concerned. It shall resume operations only when it has reached an alternative site at a minimum distance of five nautical miles from the site of the encounter within the area foreseen in its fishing plan provided for in Article 4(1)".*

at the UN, which took place in November 2016, resulting in new provisions on VMEs in the relevant UNGA Resolution (A/RES/71/123). Therefore, following internal preparatory procedures (e.g., inter-service consultations, drafting the evaluation roadmap, designing the evaluation, etc.) an evaluation process was launched in 2019 to assess the implementation of the VME Regulation and whether an amendment was required.

A study was performed by an external contractor and included, among the deliverables, a desk study, and a stakeholder consultation, including an online questionnaire, aiming at assessing the VME Regulation. The desk study titled "Improving environmental sustainability of deep-sea fisheries with emphasis on the conservation of Vulnerable Marine Ecosystems" was launched in 2020.[9] The COVID-19 pandemic slowed down the development of the study and its results were published in 2023. However, the desk study only achieved limited participation from stakeholders during the consultation phase. To complement the information provided by the desk study, as well as the reporting to the Commission by the Member States pursuant to Article 12 of the VME Regulation, the Commission launched a call for evidence and a public consultation to collect further inputs to the evaluation process.

Following the 2010 Commission's assessment of the implementation of the VME Regulation and the above-mentioned developments, the evaluation process was centred on the period 2008-2023 corresponding to the years of the VME Regulation's implementation. Regarding the geographical scope, the evaluation process covered the fishing activities of EU Member States in the Southwest Atlantic Ocean (FAO Area 41), where no RFMO/A is in place.

The main objectives of the evaluation process were to:

1. assess if the original objectives of the VME Regulation have been reached and whether they are still fit for purpose,
2. assess if and how the situation has changed during the period covered by this evaluation process and take into consideration relevant developments at UN and EU level,
3. consider the lessons drawn from the implementation of the VME Regulation since 2008,
4. assess the performance of the VME Regulation and whether amendments are needed.

The evaluation process aimed at replying to all 5 key evaluation criteria: effectiveness, efficiency, relevance, coherence, and EU added value, which are analysed and organised in the report as follows:

- To what extent was the intervention successful and why? (effectiveness, efficiency, coherence),
- How did the EU intervention make a difference? (EU added value),
- Is the intervention still relevant? (relevance).

There are important limitations in the different materials supporting the evaluation process.

The desk study conducted by the external contractor did not focus solely on the evaluation of the VME Regulation. It also aimed to assess and improve scientific data and advice, as well as relevant management measures, regarding the environmental sustainability of deep-sea fishing and the conservation of VMEs. Its objective was also to identify best

[9] *See* footnote 2.

practices would be used to inform and strengthen the policy choices of the EU, in particular in the context of its participation in RFMOs and provide a "model regulation" of VMEs. In the latter context, one of the deliverables was to support the evaluation of the VME Regulation.

In addition, despite several efforts, the response rate to the stakeholder consultation including the dedicated online questionnaire remained low under the desk study. In particular, a cross section of stakeholders from national authorities, representatives of the fisheries sector in Member States including the Long-Distance Advisory Council, NGOs interested in marine biological resources, in particular the Deep-Sea Conservation Coalition (DSCC), and scientists were selected and entered in a list of potential participants. The stakeholders were identified based on the project team's experiences of scientists and other interest groups that work on deep sea fisheries including VMEs. The list included a total of 64 potential participants. Once the survey period had ended and responses collected, 36 were responses received. Of these, only four completed the survey in full. The four stakeholders that fully completed the survey include two from the fisheries sector, one from an NGO and one scientist. The remaining 32 provided partial responses only, principally on the first part on personal questions. A targeted stakeholder consultation was therefore initiated by contacting a shortlist of 26 stakeholders but only four people reacted positively to the invitation. An interview was conducted with one of the four people that had accepted to be interviewed while the other three refused to share their availability despite several reminders.[10]

The desk study highlighted that it was therefore difficult to draw any key conclusions but that the views discussed in the report could have informative value of the different aspects of the VME Regulation.

The public consultation (and the call for evidence) undertaken by the Commission faced the same issues. The response rate was low despite the efforts to engage the public in this exercise. In particular, the call for evidence received feedback from 22 respondents. Of these, 10 answered as EU citizens, 5 respondents as members of NGOs, 4 on behalf of business associations, 2 respondents as members of consumer and environmental organisations, and one did not specify. Regarding the public consultation, 10 stakeholders provided feedback. Of these, 3 answered as members of an NGO, 2 respondents came from an academic/research institution, and another 2 answered on behalf of business associations. The remaining 3 answered as stakeholders coming from a company and/or as citizens.

Both the stakeholder consultation carried out with the help of the external contractor under the desk study and the public consultation conducted by the Commission do not allow to draw real founded conclusions.

Details on the consultation activities are provided in the synopsis report in Annex V.

The methodology includes two different approaches: an external desk study and a Commission analysis based on the best available information and the public consultation. Annex II presents more details on the methodology and the reference documents.

[10] *See* footnote 2, pp. 1089-1091.

2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?

2.1 Description of the VME Regulation and its objectives

2.1.1 Rationale of the adoption of the VME Regulation

Certain marine ecosystems such as seamounts, deep water corals and hydrothermal vents are threatened by fishing practices that can have destructive effects on the physical integrity of the habitat. Different bottom fishing gears, when deployed in areas containing such ecosystems, have been documented to have different levels of adverse impacts on deep water corals and sponges, and on the complex ecosystem they host and support. These habitats have not been fully explored and described yet, but there is adequate scientific evidence suggesting their high value as biodiversity hotspots.

The UNGA has been discussing the problems posed by high seas destructive fishing practices since 2004. The problem had therefore become a sensitive issue in international fisheries governance. It was the subject of particular concern in relation to areas of the high seas for which a RFMO had not been established to regulate fishing and its environmental impacts. The EU actively participated in this debate and was instrumental in defining the package of recommendations on which the General Assembly ultimately reached consensus.

The EU is a Contracting Party to the United Nations Convention on the Law of the Sea and to the Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. These international instruments lay down the duty of States to take measures or cooperate with other States in taking such measures for the conservation of the living resources of the high seas and the protection and preservation of the marine environment.

The VME Regulation implemented the recommendations issued by the UNGA (Resolution 61/105 of 8 December 2006) on measures to eliminate destructive fishing practices that threaten vulnerable marine ecosystems in the high seas. The VME Regulation applies to EU vessels operating in the high seas in areas that are not subject to regulation by a RFMO/A and thus require unilateral flag State regulation.

The UNGA called on States and RFMOs[11] to implement rigorous regulatory measures in respect of bottom fisheries, each in their respective areas of competence. It provided four fundamental elements that should feed into such measures. The relevant clauses of Resolution 61/105 (Paragraph 83) read as follows: RFMO/As are called to adopt and implement measures

a. To assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed;
b. To identify vulnerable marine ecosystems and determine whether bottom fishing activities would cause significant adverse impacts to such ecosystems and the long-term sustainability of deep-sea fish stocks, inter alia, by improving scientific research and data collection and sharing, and through new and exploratory fisheries;

[11] UNGA Resolution 61/105, paras. 80 *et seq*.

c. In respect of areas where vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold-water corals, are known to occur or are likely to occur based on the best available scientific information, to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems;
d. To require members of the regional fisheries management organizations or arrangements to require vessels flying their flag to cease bottom fishing activities in areas where, in the course of fishing operations, vulnerable marine ecosystems are encountered, and to report the encounter so that appropriate measures can be adopted in respect of the relevant site.

Following the call for international urgent action, the adoption of the VME Regulation aimed to prevent and/mitigate any significant adverse impacts of bottom fishing activities. The use of bottom gears can be extremely detrimental to the integrity of vulnerable marine ecosystems. Observed and potential sources of damage include bottom trawls, dredges, bottom-set gillnets, bottom-set longlines, pots, and traps. Their effects can easily be aggravated when combined with the impact of non-fishing activities, such as hydrocarbon prospection, laying of submarine cables or waste dumping. Once such reefs are destroyed, they take an extremely long time to recover, if they recover at all. It was therefore reasonable to assume that bottom fishing might be destructive when taking place in areas where such habitats occur.

Another problem was the lack of regulations with regard to high seas fisheries, in particular, in areas where States had not yet established an international body (RFMO) empowered to regulate them. Although UNCLOS establishes the duty of all States to take, or to cooperate with other States in taking measures for the conservation of the living resources in such areas,[12] the system of international governance was considered weak as there was no organised framework to ensure a coordinated conservation effort through common fishing rules and, most importantly, control and enforcement systems.

The adoption of the VME Regulation was closely linked to the development of a maritime policy of the Union but also to Illegal, Unreported and Unregulated (IUU) fishing. The VME Regulation aimed at contributing to reinforcing the international fisheries governance system, and it would allow the EU to continue intervening proactively in RFMOs so that their regulatory regimes address the issue of destructive fishing practices effectively. It would also allow the EU to adopt rules under the Common Fisheries Policy (CFP) to ensure that its fleets operating in non-RFMO areas do not engage in such practices.

Furthermore, the EU adopted measures to protect deep-sea ecosystems in EU waters, tabled and/or supported proposals to the same end in relevant RFMOs (NEAFC and NAFO for the North Atlantic; SEAFO for the Southeast Atlantic; CCAMLR for the Antarctic; GFCM for the Mediterranean; and more recently in SIOFA in the Indian Ocean and SPRFMO in the South Pacific) and implemented these measures into EU Law. The proposal for the VME Regulation aimed at completing the coverage of the EU action by addressing activities taking place outside EU waters and in areas not placed under the responsibility of a RFMO.

[12] UNCLOS, Article 117.

The impact assessment that preceded the proposal included three policy options, out of which, the adoption of a Regulation was deemed to be the most effective to address the needs and problems.[13]

Option 1 proposed that no specific action should be taken to transpose the UNGA Resolution, as this was a non-binding act. This option, however, would mean that the EU would inform its position in international fisheries organisations and EU vessels operating in non-RFMO areas would be left under individual EU Member State responsibility. This option was assessed as having negative impacts on the EU's international credibility and ability to play a leading role in enhancing international fisheries governance. It also implied abandonment of responsibilities falling upon the EU under the CFP.

Option 2 suggested going farther than the recommendations made by the UN General Assembly and implementing a prohibition applicable to EU vessels unilaterally. This option was assessed as having significant economic and social negative impacts on the EU fleets. It was also assessed that this option would demonstrate a strong commitment by the EU to protect vulnerable marine ecosystems. The effectiveness of this effort, however, would not be guaranteed if other flag States would continue to authorise fishing and thus would make it difficult to justify the constraints imposed on the EU fleet.

Option 3 sought after a clear policy definition and stringent regulation implementing the UN General Assembly recommendations. This option entailed taking specific action to implement the Resolution by adopting a) a policy document that would commit the Commission and the EU on a clear strategy in international fora, indicating objectives and intended actions; and b) a regulation to implement the measures recommended by the UN General Assembly in respect of EU vessels operating in non-RFMO areas. This option was assessed to give visibility to the EU's commitment to the attainment of the objective and reinforce the EU's credibility and ability to lead in the international scene, especially in RFMOs and other fisheries and environmental organisations. It would also bring the Southwest Atlantic trawl fishery fully under the CFP regulation and establish an operational framework sufficiently precise to be effectively implemented at Member State level. Further, it would provide a balanced solution between environmental protection and fishing interests, if properly implemented. It was also assessed that this option would entail certain constraints in terms of administrative investment to implement a regime based on prior assessments for fishing activities in the high seas, but it was assumed that the extra costs and administrative burden involved were outweighed by the need to ensure sound integration of environmental considerations into the management of economic activities.

2.1.2 Objectives of the VME Regulation

The general objective for the adoption of the VME Regulation was to protect vulnerable deep-sea ecosystems from significant adverse impacts resulting from the use of bottom gears. The elimination of destructive fishing practices is a commitment that the EU took up at the Johannesburg World Summit on Sustainable Development in 2002. There was an urgent need to address the problem, as there was increasing evidence that bottom fishing could seriously damage deep-sea corals and other fragile benthic habitats. These habitats take extremely long time to recover, if at all.

[13] Commission staff working document - Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems - Impact Assessment {COM(2007) 604 final} {COM(2007) 605 final} {SEC(2007) 1314} {SEC(2007) 1317} /* SEC/2007/1315 final */- EUR-Lex - 52007SC1315 - EN - EUR-Lex (europa.eu)

From an operational perspective, the objective was to promote consistency and coherence with other main EU policies and strategies. The EU is under a Treaty obligation to ensure proper integration between the CFP and the environmental policy.[14] It was considered that sustainable fisheries could no longer be understood as determined only by stock dynamics, but fishing for deep sea species was – and still is – in itself a challenging management issue. While the then CFP[15] took into account the impact of fisheries on the environment to a certain extent, there was a need to ensure full implementation of the instruments that the new regulatory framework would provide for.

Another operational objective was to ensure a leading role for the EU in the international fisheries governance fora. The EU is one of the few players in the international scene with a global fisheries presence and should demonstrate the ability and will to push for more efficient management regimes in RFMOs and beyond, as well as in efforts against IUU fishing. In the framework of this particular UNGA process, there was an opportunity for the EU to lead by example in reinforcing the role and responsibilities of flag States in cases where the governance system was weak, as was the case for areas not regulated by a RFMO/A.

Furthermore, the specific objective of this intervention was to address international governance gaps by 2009. The absence of RFMOs in certain areas was one of the key issues discussed by the UNGA. Some States believed that this absence made fishing in the high seas inherently irresponsible. The EU replied to this argument and pleaded in favour of three solutions to the problem:

a) States should do their utmost to overcome the political difficulties standing in the way of global RFMO coverage,
b) practical arrangements such as interim voluntary cooperation regimes for the conservation and management of resources until such global coverage is formally achieved on the basis of binding international conventions, and
c) enhanced flag State jurisdiction, transparency, and peer review for non-regulated areas.

The UNGA Resolution called for action in these fronts at the latest by the end of 2008 and foresaw a review of action taken in 2009. Therefore, the EU had to make every effort to address these issues immediately and decided to adopt the VME Regulation.

The VME Regulation establishes that the competent authorities of an EU Member State can only issue special fishing permits for the use of bottom fishing gears on the high seas if specific conditions are met. Member States are obliged to carry out an assessment of the potential impacts of the vessels' intended fishing activities and can only issue a special fishing permit after concluding that such activities are not likely to have significant adverse impacts on VMEs. The use of bottom gears is prohibited in areas where no proper scientific assessment has been carried out and made available. The Regulation also contains provisions on unforeseen encounters with VMEs, area closures, vessel monitoring system, provisions for serious infringements and an observer scheme for all vessels which have been issued with a special fishing permit.

[14] Communication COM(2001) 143 to the Council and the European Parliament - Elements of a Strategy for the Integration of Environmental Protection Requirements into the Common Fisheries Policy Microsoft Word - en143.doc (europa.eu)

[15] [Repealed] Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

The intervention logic of the VME Regulation was based on the analysis of the relevant provisions and rules in the area of the proposal (both in terms of geographical coverage and concerned activities), the consistency with other EU policies, the recommendations issued by the UNGA, the assessment of a few policy options for EU action, and their potential impacts. The intervention logic presents the needs, the objectives, the actions to be taken by Member State authorities and other actors to implement it, and the expected results (outputs, outcomes and impacts).

The intervention logic illustrated in Figure 2 below draws elements from the 2007 impact assessment underpinning the proposal for the adoption of a Council Regulation.

Figure 2-Intervention logic of the adoption of Regulation 734/2008

2.2 Point(s) of comparison

In principle, the starting point for assessing any actions is the state-of-play before the adoption of the VME Regulation, both in terms of actions undertaken and outcomes. However, as previously mentioned, the application of the VME Regulation to only a few Member States, which in turn results in limited information, complicates the comparison.

It is also worth drawing attention to the uncertainty affecting the relevant data prior to the adoption of the VME Regulation, as outlined in the VME Regulation's impact

assessment.[16] The first one related to the difficulty in distinguishing fleets that operate in the high seas from those operating in exclusive economic zones. The data collection systems that supported fisheries management were evolving, but they were largely based on the schemes created, notably by the FAO, that did not collect data separately for the high seas. This comes from a time when practically 100% of fishing activities were taking place in EEZs. The evolution was largely driven by the need to improve high seas governance, but the challenge also remained that fleets are mobile and deploy their activities often in both EEZs and the high seas. For example, the EU fleets of the Southwest Atlantic operate(d) indistinctly in the Falklands Fisheries Protection Zones and in the high seas.

These same difficulties affected the Commission's ability to identify with precision the socio-economic effects of the measures proposed. It was only certain that introducing rules where there were previously none would probably result in costs for both administrators and economic operators. In this case, the specific, foreseeable administrative and economic burdens of the different measures (as explained in Annex IV) relied on established administrative structures and to a large extent, on existing procedures (e.g. issuance of fishing permits, controls and reporting).

Taking this information into account, the VME Regulation is assessed throughout this report against its expected outputs and impacts, or by comparison with the past situation, to the best extent possible and on the best available evidence given the lack of data. The following reference points are used for the comparison:

- The need for developing a rigorous regulatory framework in respect of bottom fishing activities as well as an international management regime for such activities.
- The effective protection of VMEs, through this framework, in the high seas outside of RFMO/As, including measures on area closures, prior assessments, monitoring and control, etc.
- The development of scientific research on the identification of vulnerable marine ecosystems and the collection of information regarding their status and the impacts of bottom fishing activities.
- The conservation and management measures adopted by RFMOs for the protection of VMEs from significant adverse impacts from fishing activities.
- The streamlining of EU policies and strategies, particularly in respect of environmental policies and sustainable development.
- The EU's opportunity and political imperative to lead in international processes aimed at improving ocean and fisheries governance.

3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?

3.1 State of play

According to UNCLOS, it is the responsibility of flag States to cooperate in the conservation and management of living resources in the areas of the high seas, including to establish subregional or regional fisheries organizations.[17] Further, vessels, including fishing vessels, in the high seas are subject to the jurisdiction and control of the State whose

[16] *See* footnote 13.

[17] UNCLOS, article 118.

flag are flying.[18] The relevant UN sustainable fisheries resolutions regarding deep-sea fisheries since 2006 (e.g., in UN Resolutions 64/72, 66/68 and 71/123) and the FAO guidelines that were adopted after the VME Regulation have had challenges regarding implementation and enforcement. This is visible by the many reminders and concerns raised in the texts of these Resolutions during the review procedures, as will be explained further below.

The EU was the first Regional Organisation or State, which adopted rules to implement UNGA Resolution 61/105 for vessels flying flags of its Member States for those areas of the high seas where no RFMO/A had been established or where no interim measures to protect VMEs from significant adverse impacts resulting from the use of bottom gears were put in place during negotiations for the establishment of a RFMO/A. The VME Regulation was deemed necessary since a considerable number of EU fishing vessels using bottom trawlers were active in areas where there was no established RFMO, particularly the Southwest Atlantic.

Since the adoption of the Regulation in 2008, relevant developments at the UN level include:

i) The adoption of the FAO International Guidelines for the management of deep-sea fisheries in the high seas in 2009, which were developed at the request of the FAO Committee on Fisheries in order to assist States and RFMO/As in the implementation of UNGA Resolution 61/105, with regards to the protection of vulnerable marine ecosystems and to the long-term management of deep-sea fisheries in the high seas.

These Guidelines provide guidance on the whole spectrum of measures required for a proper management of deep-sea fisheries including the appropriate regulatory framework; data collection, reporting and assessment; identification of VMEs and assessment of significant adverse impacts; enforcement and compliance and measures necessary to ensure the conservation of target and non-target species, as well as affected habitats.

ii) Reviews at the UN General Assembly (2009 Resolution on Sustainable Fisheries 64/72; 2011 Resolution on Sustainable Fisheries 66/68; 2016 Resolution on Sustainable Fisheries 71/123 and 2022 Resolution on Sustainable Fisheries 77/118).

These Resolutions expressed converging views reflecting the concerns that the implementation of the measures in the UNGA Resolution 61/105 has been insufficient and uneven, particularly those regarding the conduct of assessments prior to the authorisation of bottom fishing activities in certain areas beyond national jurisdiction and the protection of deep-sea fish stocks. The Resolutions also called for:

a. the furtherance of scientific research to identify vulnerable marine ecosystems and gather biological information on these ecosystems,[19]
b. enhanced actions consistent with the ecosystem and precautionary approaches,[20]
c. transparency and capacity-building for assessments and information gathering,[21]

[18] UNCLOS, articles 91 *et seq*.

[19] United Nations General Assembly Resolution, A/RES/64/72, para 119.

[20] United Nations General Assembly Resolution, A/RES/66/68, para 129.

[21] *Idem.*

d. the inclusion of climate change and ocean acidification impacts in taking measures to manage deep-sea fisheries and protect vulnerable marine ecosystems,[22] and
e. continuing implementing the FAO International Guidelines for the management of deep-sea fisheries in the high seas.[23]

iii) The adoption of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) on 19 June 2023, following nearly twenty years of negotiations. The Agreement has not yet entered into force. [24]

Even though this Agreement does not specifically address the protection of VMEs from significant adverse impacts resulting from bottom fishing gears, it focuses on a package of issues under the overall objective of ensuring the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the present and in the long term. For example, it highlights the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean and maintain and restore the ecosystem's integrity.[25] It sets out specific measures in respect of these issues, such as the thresholds and factors for conducting environmental impact assessments, including the characteristics and ecosystem of the location (including areas of particular ecological or biological significance or vulnerability).[26] The Agreement also outlines the modalities to implement and monitor those measures, as well as institutional arrangements to support its implementation.

iv) The adoption of conservation and management measures for the protection of VMEs in RFMOs dealing with deep sea fisheries.

All the RFMOs managing deep sea fisheries have established dedicated regulatory frameworks that aim at minimising any significant adverse impacts from fishing activities on VMEs. Although there are differences in their specific requirements, there are similarities regarding the key components of the existing regulatory framework ensuring the protection of VMEs, as illustrated in the external study.[27]

At EU level, the CFP was last reformed in 2013[28] and two regulations under it, the SMEFF Regulation and the DSAR directly connected to the VME regulation, were adopted.

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[22] United Nations General Assembly Resolution, A/RES/71/123, para 185.

[23] United Nations General Assembly Resolution, A/RES/77/118, para 203.

[24] Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, New York, 19 June 2023.

[25] *Idem*, Preamble paragraphs 3,11 *and* Articles 7(h), 17(c).

[26] *Idem*, Article 30(d).

[27] *See* footnote 2.

[28] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC.

The last CFP reform aimed to ensure that the fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits. Among the most important points were, for example, the attention to the environmental, economic, and social dimensions of fisheries, the management of fish stocks based on scientific advice, the application of the sustainability principle to EU vessels fishing outside EU waters etc. The CFP covers activities carried out on the territory of Member States, in Union waters, including fishing vessels flying the flag and registered in third countries, by Union vessels outside Union waters, and by nationals of Member States, without prejudice to the primary responsibility of the flag State. The CFP does not include provisions specifically targeting the management of bottom-fishing activities for the protection of vulnerable marine ecosystems in the high seas but rather sets out the rules for, among others, the conservation of marine biological resources and the sustainable management of fisheries and fleets exploiting such resources.

The SMEFF Regulation deals with and strengthens the framework under which authorisations of Union vessels to fish outside Union waters and authorisations granted to third country fishing vessels to operate in Union waters are issued. Together with the Control Regulation (EC 1224/2009)[29,30] and the IUU (EC 1005/2008) Regulation[31], it is one of the three implementing pillars of the control and enforcement provisions of the CFP.[32] The CFP promotes in particular a sustainable, ecosystem-based and precautionary approach to fisheries management, emphasising the coherence between its internal and external dimension. EU fishing activities outside Union waters should be based on the same principles and standards as those applicable under Union law in the area of the CFP. In light of the need to monitor the EU's fleet wherever it operates and whatever the framework, the adoption of the SMEFF Regulation aimed at addressing the objectives of the CFP and provide consistency with the Control Regulation.

The DSAR has established rules to regulate fishing for deep-sea stocks in the Union waters of the north-east Atlantic and in the international waters within the area of competence of the CECAF. The general objectives are to ensure the long-term conservation of deep-sea stocks and prevent significant adverse impacts on VMEs within the framework of deep-sea fishing, improve the scientific knowledge on deep-sea species and their habitats, and

[29] Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006

[30] Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control

[31] Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

[32] Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008, preambulatory paragraph 12.

ensure that Union measures for the purpose of sustainable management of deep-sea fish stocks are consistent with the Resolutions adopted by the UNGA, in particular Resolutions 61/105 and 64/72.

3.2 Reporting obligation

The implementation of the VME Regulation rests, inter alia, on the reporting obligation enshrined in Article 12(1). Member States are required to communicate to the Commission for each half calendar year within three months of the expiry of that period, a report on:

a) Catches;

b) Compliance by fishing vessels;

c) Measures taken to remedy and sanction instances of non-compliance and serious infringements;

d) Their implementation of area closures.

Member States are also required to submit all impact assessments carried out prior to issuing the special fishing permits pursuant to Article 4(2).

According to the implementation report that was submitted by the Commission to the European Parliament and the Council in 2010, less than half of the Member States responded within the stipulated deadline (10 for the period January to June 2009 and 11 for the period July to December 2009). However, the required information was finally provided after repeated reminders from the Commission. From the information received, only vessels from one Member State fell under the scope of this Regulation.[33]

In addition to this report and in view of this evaluation, the Commission compiled the information received from Member States as response to the reporting obligation of the VME Regulation into a draft implementation review of the Regulation for the period 2008 – 2023. To support the finalisation of the draft implementation review, Member States' authorities were invited to verify and/or complement and/or correct the information provided in this draft review report.

Between 2008 and 2023, most of the Member States did not provide to the Commission neither a report according to Article 12 nor a reply informing that their vessels do not fall under the scope of the Regulation.

The number of Member States replying that they had not authorised fishing vessels to fish in the high seas under the scope of the Regulation or those reporting according to the provisions of the Regulation for each half a year period between 2008 and 2023 varied between zero and eleven. The Member States who provided any reporting in response to Article 12 of the Regulation for each half a year period between 2008 and 2023 varied from zero to two.

[33] *See* footnote 7, point 6.

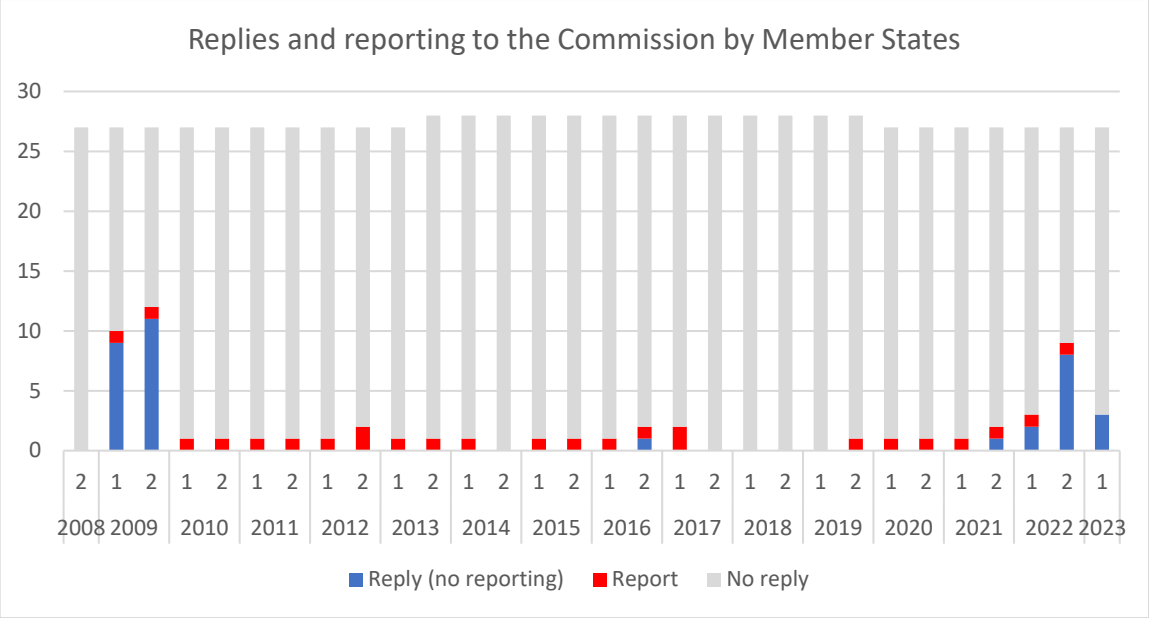

Figure 3- The number of Member States who provided a reply to the Commission confirming that no vessels flying their flag had been authorised to fish in the area and the number of Member States providing a report requested under Article 12 of the Regulation.

No reports were received from Spain – the main Member State authorising fishing operations in the Southwest Atlantic – for 2010, 2011 and 2018 and reports were also missing for certain half year periods in 2012, 2014, 2017, 2019, 2020 and 2023. The content of the reports received from Spain was often partial, the reports contained information on the catches but other components of required reporting (e.g. impact assessments prior to permitting, information on compliance by the fishing vessels with fishing plans and with the requirements on unassessed areas, information on unforeseen encounters with vulnerable marine ecosystems and area closures, measures taken to remedy and sanction instances of non-compliance and serious infringements and area closures) were most of the time either incomplete or missing. As of 2021, Spain provided an assessment of the sustainability of the fleets based on the SMEFF Regulation. However, this does not fully correspond to the requirements of Article 4 of the VME Regulation especially when it comes to the prior assessment of potential impacts of the vessel's intended fishing activities and conclusions that such activities are not likely to have significant adverse impacts on vulnerable marine ecosystems.

Following the Commission's call to Member States to verify and/or complement or modify the draft implementation review report, only 12 Member States sent a reply. Only two of them provided additional information, while the rest of them stated that they had not issued fishing authorisations for the geographical area under the VME Regulation for the period 2008-2023. However, this was not properly communicated to the Commission biannually and is, therefore, not depicted in the above graph.

Additional information on Member States' vessels fishing in FAO area 41

Fishing authorisations

Member States's fishing authorisations issued for the EU vessels fishing outside the EU waters are collected in the EU CATCH database in accordance with Article 39 (2) of the SMEFF Regulation (EU 2017/2403). Member State's fishing authorisations to the FAO41 area were scrutinised to check if they were in line with the reporting received under the VME Regulation. Information was available only for the 2021 – 2023 period since the

SMEFF Regulation entered into force in 2018. Member States only have the obligation to declare to the Commission the high seas authorisations since that year.

For the year 2021, a total of 26 fishing permits were issued authorising Member States' vessels to fish in FAO 41 area. According to the authorisations, the vessels were targeting deep sea species such as Argentine shortfin squid (*Illex argentinus*), Patagonian squid (*Loligo gahi*), longtail southern cod (*Patagonotothen ramsayi*). In year 2022, the total number of permits in the database was 29 and in the first half of 2023 it was 31.

	2021	2022	2023-first half
Spain	25	26	26
Portugal	1	2	2
Lithuania	-	1	2
Poland	-	-	1
Total	**26**	**29**	**31**

Figure 4- Fishing authorisations for FAO41 based on the EU CATCH database given by Member States to vessels flying their flag.

The majority of the permits were issued for vessels operating under the Spanish flag, 25 authorisations for 2021 and 26 for both 2022 and 2023. In addition, Portugal had authorised up to two vessels to fish in FAO area 41 in years 2021, 2022 and 2023. Lithuania had authorised one vessel for 2022 and two for 2023. Poland had given permission to one vessel for the year 2023.

It seems that there is no coherence between the authorisations given by Member States to their vessels to fish in the FAO area 41 and the reports received by the Commission under the VME Regulation. The reports by Member States to the Commission should be accompanied by all impact assessments carried out by Member States prior to issuing the fishing permits.[34] The only Member State providing any reporting to the Commission according to Article 12 was Spain, which was also the main issuer of fishing authorisations. However, it seemed that Spain's reports were pertaining to the requirements of the SMEFF Regulation rather than those of the VME Regulation. As for Portugal and Lithuania, who had also authorised fishing vessels to FAO area 41 for 2021 and/or 2022, no reports according to Article 12 had been received by the Commission for those years. This does not necessarily mean that these vessels were conducting fishing activities with bottom gears, in which case the Commission should have received reports. However, this also does not imply that Member States are exonerated from communicating to the Commission that no vessel flying their flag operates fishing activities with bottom gears in the geographical area of the Regulation, all the more so if fishing authorisations for this area exist.

Catches reported by Member States for the international waters of the FAO area 41

EU's Fisheries Data Exchange System contains data since 2012 on catches gathered from Member States' fishing vessels. This data allowed the Commission to check which countries had reported type of catches from the high seas of FAO area 41 that most likely fall under the Regulation. The extracted data for further analysis regarded only catches of demersal and deep-sea species that can be considered subject to deep-sea fishing with

[34] Council Regulation (EC) No 734/2008, Article 4 (2).

bottom gears. Such species have been listed, for example, in the external contractor's evaluation study and they included species such as pink cusk-eel, Southern hake, Argentine hake, Patagonian grenadier, grenadiers, red codling, longtail southern cod, southern blue whiting, Atlantic redfish, Patagonian toothfish, tadpole codling, Argentine shortfin squid, squids, European squid, Patagonian squid, cephalopods, and Patagonian toothfish. All catches of apparent pelagic species (e.g., tunas, marlins, skates, rays and sharks) were left out of consideration.

Five Member States' (Spain, the United Kingdom, Estonia, Portugal, and Lithuania) vessels reported catches from the FAO area 41 international waters, i.e., high seas. Spain's catches were mostly one to two orders of magnitude larger than those of the others. They ranged from slightly less than 15,000 tons/year in 2013 to almost than 105,000 tons/year in 2015. The United Kingdom's (until 2020) catches were the second largest, reaching a maximum of slightly more than 4000 tons/year in 2015. Estonia reported catches (about 3000 tons/year) only in 2012 and Portugal and Lithuania both reported catches only in two years and both mostly less than 1000 tons/year.

There are more reports of data of demersal and deep-sea catches than there are corresponding Article 12 reports to the Commission under the VME Regulation. The only countries which had provided to the Commission any reporting in response to the VME Regulation were Spain and Portugal. Spain was the main fishing nation in the area based on the catch data, while Portugal only sent a report related to authorisations to FAO area 34 in 2017. Three other Member States, including the then Member State United Kingdom, Estonia, and Lithuania had reported at least occasional catches from the area but none of them had provided reporting under the VME Regulation.

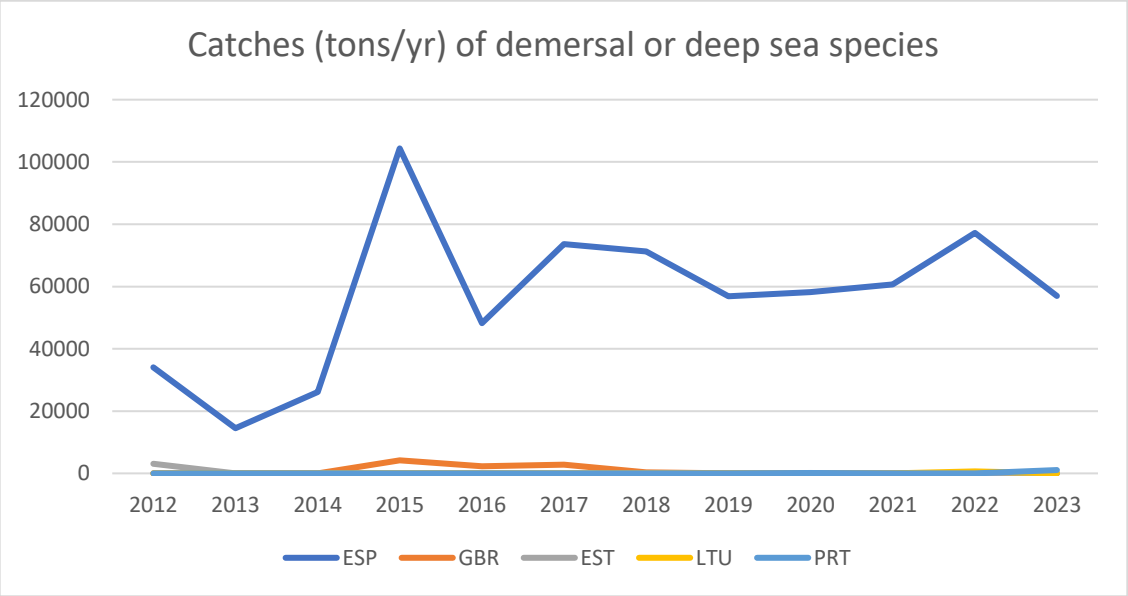

Figure 5-Catches of demersal and deep-sea species by Member States vessels in the high seas of FAO area 41 from 2012 to 2023 as reported to the EU's Fisheries Data Exchange System

Synopsis

As of 2023, Member States have not been responsive neither to the obligations of the Regulation (reports according to Article 12 for those having authorised vessels to fish in FAO area 41) nor to the reminders sent by the Commission (replies by those Member States who had not issued authorisations). Only one Member State reported to a meaningful extent, albeit with some gaps. Replies from Member States stating that no fishing activities

falling under the remit of the Regulation were not received from any of the Member States for most of the years.

Fishing authorisations to international waters of FAO area 41 included in the EU CATCH registry for 2021 and 2022 indicate that some Member States had authorised fishing possibly falling under the Regulation. Furthermore, according to the catch data in EU's Fisheries Data Exchange System there were five Member States having deep-sea fishing activity in the area implying a likely use of bottom gears. The authorisation of their fishing would have necessitated a prior impact assessment and post authorisation period reporting to the Commission according to the Regulation, but these Member States did not report accordingly.

It can therefore be assumed that the Member States did not achieve a more stringent and accurate implementation of the Regulation called for in a report to the European Parliament and the Council in 2010 despite the recent slight increase in the number of replies and quality of reports by those who reported. In its 2010 report to the European Parliament and the Council, the Commission stressed the importance of proper implementation to ensure that the measures prescribed in the two UNGA Resolutions were fully implemented by the EU Member States. Particularly, the Commission stressed that the prior impact assessments should reach the desired standard to make sure that bottom fishing is only authorised if it is environmentally sound.

4. EVALUATION FINDINGS (ANALYTICAL PART)

The following analysis is based on the best available evidence collected through the desk study as well as consultation activities and available in-house data. **However, given that the consultation activities only achieved a very low response rate, it is it difficult to extract any key sound conclusions and the findings must be received with caution.**

4.1 To what extent was the intervention successful and why?

Success is assessed in terms of the extent to which the Regulation achieved its objectives effectively, efficiently, and in a coherent way. The consultation activities that were undertaken aimed at addressing these evaluation criteria, which are analysed below.

4.1.1 Effectiveness

As described in section 2.1.2, the general objective of the VME Regulation is to protect vulnerable deep-sea ecosystems in the high seas through regulating bottom fishing activities. The evaluation aimed at gathering information to form an opinion on the progress made to date towards this objective and the role of the VME Regulation in delivering the desired results. It also aimed at gathering inputs to seek to identify the factors driving or hindering progress.

The feedback received during the consultation activities undertaken both by the external contractor and the European Commission indicated that the VME Regulation has partly contributed to achieving its general objective. It was generally agreed that the VME Regulation has put forward measures to avoid and mitigate to the extent possible any significant adverse impacts from bottom fishing practices on VMEs, improve scientific research and data collection, and contribute to a certain degree to the protection of deep-sea ecosystems' integrity from significant degradation. The influence of the VME Regulation as well as of the preceding UN resolutions have been positive in shaping regional and multilateral implementation of the relevant rules for the protection of VMEs,

including the conduct of States within relevant organisations. The VME Regulation has also triggered the development of several scientific exercises and assessments, which resulted in the mapping of the areas falling under the scope of application of the VME Regulation as well as of the impacts of fishing activities. It has also managed to regulate access to fisheries through the introduction of special fishing permits, the prohibition of bottom fishing in unassessed areas and the closure of areas. The factors that positively affected the realisation of the VME Regulation's objectives were counted to be the advancement of research and science and the framing of bottom fishing activities through special rules.

Nevertheless, there was some criticism in the received feedback against the VME Regulation and the efforts to protect vulnerable marine ecosystems. First, despite overall progress toward the protection of VMEs, the lack of data collection and aggregation of information hinders a more comprehensive assessment and understanding of the full impact of the VME Regulation in achieving its objectives as well as a sound assessment of the status of the ecosystems in the area concerned. Secondly, the scope of application of the Regulation offers limited protection to the VMEs given the lack of international binding rules for the specific geographical area, namely, the Southwest Atlantic (FAO Area 41). This also creates an unlevel playing field between EU and non-EU fleets fishing in the area, in which case the latter are facing more favourable conditions marketwise. While the VME Regulation is deemed successful to a certain degree, the lack of enforcement, surveillance, monitoring, and control, hampers progress, weakens its implementation and therefore partially its success. Furthermore, the absence of key definitions from the text of the VME Regulation creates uncertainty and puts additional obstacles to the proper protection of VMEs. For instance, the VME Regulation does not refer to the threshold levels for VME indicators, definition of unforeseen VME encounters, follow up actions once the move-on rule has been triggered, VME sampling protocols, VME taxa, and depth limits in relation to fisheries and communities.

4.1.2 Efficiency

The efficiency of the Regulation in terms of cost-effectiveness and proportionality of actual costs to benefits was difficult to measure. As the external study was not able to provide adequate results for evaluating the cost-effectiveness of the VME Regulation, this part is largely based on the Commission-led consultation activities.

While most of the stakeholders interviewed have provided a neutral to positive feedback on the efficiency of the instrument "in general", a couple of others remained negative in their judgment. However, most of the respondents did not provide concrete examples of costs with some of them declaring that they are unable to respond to such questions and a couple of others, notably representing Member States, indicating that it is difficult to calculate these costs.

Overall, according to some stakeholders, the costs related to the scientific research in the geographical area of the VME Regulation as well as the observer's coverage system are heavy and pose difficulties in implementing the Regulation. It was pinpointed that the Regulation creates administrative burdens and bureaucratic hurdles, which hinders the efficiency of some measures (e.g. the lack of personnel in conjunction with the frequency of the reporting obligation). Apart from Member States, this also seems to apply to the fishing industry since the fishing authorisations, including the preparation of detailed fishing plans, adds largely to the administrative costs for EU fishing businesses. Some stakeholders mentioned that the level of information that is being required by the Commission (regarding impact assessments, including for the authorisations under the

SMEFF Regulation) is disproportionate to the level of information that is de facto available to Member States when performing the impact assessment.

This notwithstanding, many of the stakeholders interviewed believe that the benefits of the Regulation in protecting vulnerable marine ecosystems in the high seas justify the costs, in particular when the progress in protecting these ecosystems, the influence on the policies and legal frameworks of States and regional or international organisations, the creation of a regulatory framework, and the raising of awareness of the importance of VME conservation in fisheries management are taken into account.

In general, and despite the limited number of responses in this evaluation, when it comes to assessing the costs and benefits of the Regulation, there is a clear split between the views of the fishing industry and Member States and those of other stakeholders such as NGOs, scientific organisations, civil societies, and citizens.

4.1.3 Coherence

Again, the external study provided minimal added value to the evaluation of the coherence criterion, therefore, this part is principally based on the Commission-led consultation activities. Overall, while the opinions regarding the coherence of the Regulation with the wider EU legal framework and international standards and obligations were mixed, there was a slight inclination towards agreeing that some overlaps with some EU legislation exist.

Regarding international standards and obligations, most of the stakeholders remained neutral in their judgement or did not provide an answer to this question. Some others, though, believe that the VME Regulation matches the international obligations as it mirrors the content of the relevant UNGA Resolutions and is complementary to measures adopted in RFMOs. However, better coordination in the latter case can still be achieved. On the contrary, some stakeholders mentioned that the implementation, surveillance, and lack of control is inconsistent with international standards. The reporting of bycatch, and the monitoring of the activities of vessels (including position, and gear type) are necessary components that are missing from the Regulation. Also, there is no collection, and no synthesis of information needed to enforce control, while the impact of the closed areas to vessels is unknown. According to these views, this leads to difficulties in assessing whether the Regulation is indeed coherent with international rules and standards.

Concerning the EU policy and legal framework, the views were split but showed a slight convergence toward some inconsistencies and overlaps. According to some stakeholders, the VME Regulation aligns with EU policies and legislation, including the European Green Deal and biodiversity initiatives. In particular, it was highlighted that the VME Regulation has been a historical reference to drive VME conservation discussions and management beyond the scope of the Regulation and has influenced many other policies. This includes the VME related work undertaken in RFMOs like NEAFC and the GFCM, as well as at EU level with several pieces of legislation which rely on or use provisions of the VME Regulation, such as DSAR, SMEFF Regulation and Regulation (EU) 2019/1241 (Technical Measures Regulation).[35] For instance, the VME Regulation creates additional

[35] Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European

requirements specific to VME protection such as the assessment and issuance of a special fishing permit, which apply on top of the SMEFF authorisations. However, it was mentioned that whether these authorisations meet the conditions of the issuance of special fishing permit under article 4 of the VME Regulation needs to be further looked into.

Another part of the stakeholders supports that there is a certain degree of incoherence between the VME Regulation and other obligations within the EU framework. These stakeholders expressed the view that the VME Regulation presents some overlaps with existing Regulations, especially, the SMEFF Regulation, which creates confusion and legal uncertainty when it comes to implementation. According to them, the applicable EU rules pertaining to the external dimension of the CFP should provide for more straightforward provisions instead of having multiple regulations that may also interplay for the same area. For example, the SMEFF Regulation applies to the high seas falling outside the scope of RFMOs for fishing vessels exceeding 24 metres in overall length.[36] Pursuant to the SMEFF, a flag Member State may issue a fishing authorisation for fishing operations on the high seas if, along with other provisions, the envisaged activity is "in accordance with a scientific evaluation, demonstrating the sustainability of the planned fishing operations, provided or validated by a scientific institute in the flag Member State", or "part of a research programme, including a scheme for data collection, organised by a scientific body. The scientific protocol of the research shall be validated by a scientific institute in the flag Member State".[37] As such, besides imposing an impact assessment similar to the one provided by the VME Regulation, it adds further conditions in terms of its validation. Another example regards the level of intervention of Member States and the Commission, which differs substantially under the different frameworks. In the case of the VME Regulation it is up to Member States to decide whether to approve or not the fishing permits, and then inform the Commission accordingly, while under the SMEFF Regulation the Commission may object to the granting of the fishing authorisation.[38] Nevertheless, apart from the above illustrations and the general indication that overlaps exist, no further concrete examples were given.

4.2 How did the EU intervention make a difference and to whom?

It is important to recall, in view of referring to the EU added value of the VME Regulation, that according to the Treaty on the Functioning of the European Union,[39] the EU has exclusive competence over the conservation of marine biological resources under the Common Fisheries Policy in order to ensure uniformity and efficiency across all Member States.

Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005

[36] Regulation (EU) 2017/2403, Article 23.

[37] *Idem*, Article 24.

[38] *Idem*, Article 25.

[39] Treaty on the Functioning of the European Union, Article 3.

The following part is largely based on the Commission-led consultation activities, given that the external study has not succeeded in sufficiently answering to the question of the EU-added value.

Most stakeholders affirmed that the VME Regulation added value at EU level. They agreed that the intervention achieved results that it would have been difficult to achieve at a different level of intervention and that the VME Regulation appears to strike a balance between conservation and socioeconomic goals. Despite the low response rate, the results showed that the Regulation manages to a certain extent to level the playing field among EU Member States fishing with bottom gears in the high seas outside of RFMOs (e.g. in terms of permitting, monitoring, reporting, administrative procedures). While responses were mixed on whether the absence of the Regulation would decrease the interest of (some) Member States to act for the protection of VMEs, there was a slight tendency in agreeing that this would probably happen. Similar responses were received to the question regarding the ability of Member States to sufficiently achieve the objectives of the Regulation if they were to act individually, showcasing the instrument has added some value at EU level.

In addition, the most prominent consequences of stopping applying the VME Regulation would be the jeopardization of the progress made by increasing the likelihood of fishing in VME areas with harmful and long-lasting impacts on seabed habitats and related biodiversity as well as risking creating legal uncertainties in an area where no RFMOs exist. It would also probably negatively affect regional and global VME conservation developments as it would send a negative policy message from the EU, which has one of the largest distant-water fishing fleets with perhaps the most progressive legal framework on VME protection. It could also slow down, and revert progress made in RFMOs when it comes to VME protection and negatively affect the implementation of related EU regulations like the SMEFF or the DSAR. Most of the stakeholders agreed that the VME Regulation has played a central role in raising awareness about the conservation of marine ecosystems and the necessity for compliance has pushed the industry representatives to adapt their strategies and behaviours, leading to the integration of various legislative policies and measures.

However, a few respondents expressed opposing views mentioning that that the cessation of the VME Regulation would bring minimal differences. In specific, they stressed that fishing operations in the high seas are already covered by various instruments, including the SMEFF and DSAR Regulations, the UN Resolutions, and the FAO Guidelines for deep-sea fisheries in the High Seas. In the absence of the VME Regulation, the only measure that would be affected would be the embarkation of observers. Nonetheless, the national measures of prior assessments and scientific advice that are in place and that are being followed for years will be able to fill up this gap. Finally, apart from that, these stakeholders supported that the non-application of the Regulation would bring a significant improvement to the bureaucracy that it has generated.

4.3 Is the intervention still relevant?

There was convergence among the collected responses that, in general terms, the Regulation still corresponds to the current objectives.[40] Namely, most responses stressed

[40] Indeed, according to megatrends, biodiversity loss and habitat loss and degradation continue to be a major threat to animal and plant species. The main driver of habitat and biodiversity loss is human activity, such as resource exploitation. In an ecosystem, the loss of one species can trigger a domino effect of extinctions

that the Regulation is still relevant when it comes to regulating bottom fishing activities in the high seas outside of RFMOs, promoting scientific research on VMEs, and contributing to the protection of the ecosystems' integrity from significant degradation. It was also highlighted that the scope of application of the Regulation remains pertinent to its objectives, while the instrument is still important in establishing protocols to cease fishing and report where an encounter with VMEs occurs and in implementing measures in accordance with the precautionary and ecosystem approach.

Despite the general view that the VME Regulation is still pertinent to its current objectives and foreseeable future needs, there were several indications that it needs to be adapted to the most recent developments and get aligned with international standards and best practices. This concerns not only the technological advancements that took place since its adoption but also the environmental changes and threats that have emerged.

For example, it was underlined that technological progress has been considerable since the adoption of the Regulation, both in terms of data management, use, and display, while the aggregation of information in relation to periodic mapping and evaluating VMEs should also be taken into account. Also, adjustments should be sought with regard to the move-on rule since scientific knowledge suggests some potential drawbacks, while ongoing discussions, including in regional organisations, explore possible alternative approaches. Readjustments on area closures or reconsidering the application of buffer zones, as well as modifying the fishing gears and reviewing the selectivity methods were also suggested by the stakeholders. In addition, and apart from the direct impacts to the seabed in VMEs, the impacts on associated marine species and habitats should also be taken into account both in terms of the prior impact assessments and fishing exercises on the ground. Impact assessments should also use parameters such as physical alteration to the seabed, sediment suspensions, as well as the welfare and survival rate of bottom-dwelling epifauna, or infauna species (e.g. benthic invertebrates) as a result of gear operations, as well as impacts on sensitive and vulnerable species recognized by the EU.

Moreover, stakeholders referred to the current better understanding of the severity and climate-driven changes and to environmental threats other than fishing that should be taken into account when regulating the protection of vulnerable marine ecosystems. For instance, land waste, pollution, including from plastics, illegal fishing, climate change impacts, global warming, ocean acidification, including the emissions generated from industries, were pinpointed. Other human activities such as future deep seabed mining or oil and gas exploration should also be considered.

5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?

5.1 Conclusions

The evaluation of the VME Regulation encountered many difficulties in gathering adequate evidence and information to properly assess its contribution to the protection of vulnerable marine ecosystems in the high seas outside of RFMO/As. Despite several efforts to gather the required information and responses, the response rate was extremely

of other species: a phenomenon that is referred to as extinction cascade. Outside planetary boundaries | Knowledge for policy (europa.eu)

low during the consultation activities conducted both by the external contractor and by the Commission.

Taking this information into account, the VME Regulation was considered overall contributory to address the needs and challenges related to the protection of vulnerable marine ecosystems from significant adverse impacts resulting from fishing with bottom gears, in the high seas, where no RFMO/As exist.

Prior and at the time of the VME Regulation's adoption, the UNGA was discussing the problems posed by high seas bottom fishing practices, including on vulnerable marine ecosystems, and the topic had become a sensitive issue in international fisheries governance. For this reason, the UNGA called on States and RFMOs to implement rigorous regulatory measures in respect of bottom fisheries, each in their respective areas of competence. The UN Resolutions and subsequently the VME Regulation created a momentum and provided common direction and priorities for further developments on this front in a moment when this was much discussed in the internation arena. These documents managed to set out the general policy and legal framework to regulate bottom fishing activities in the high seas and put forward measures to identify vulnerable marine ecosystems, assess the impacts of such activities on VMEs, ensure restrictive actions in case of adverse impacts and encounters with such ecosystems, and advance and share scientific knowledge and data.

While the VME Regulation achieved to a certain extent its general objective, namely, the protection of vulnerable deep-sea ecosystems through regulating bottom fishing practices, its application only to EU Member States restricted the desired effects. Over the years, the application seemed to be relevant only to a handful of Member States, which appear to continue to decrease, while the activity of non-EU fleets in the geographical area of the VME Regulation challenges its positive impacts. At the time of its adoption, the VME Regulation also achieved to address international governance gaps, mostly related to the absence of a relevant RFMO in the area.

From an operational point of view, namely the promotion of coherence and consistency with other main EU policies and strategies and the promotion of the EU as a global leader, the VME Regulation managed to achieve these goals over the course of time. However, the introduction of new EU legislation (e.g. SMEFF Regulation) during the past years redrew the picture, complicating to a certain extent further progress. At the same time, the EU managed to ensure a leading role in the international fisheries governance fora to boost more efficient management regimes as well as strengthen the efforts for marine environmental protection. The EU was among the first regional organisations that introduced a strict legal framework for vessels flying flags of its Member States for those areas of the high seas where no RFMO/A had been established or where no interim measures to protect VMEs from significant adverse impacts resulting from the use of bottom gears were put in place during negotiations for the establishment of a RFMO/A. This, however, and despite the positive impacts, might have created an unlevel playing field for the EU fleets operating in the Southwest Atlantic in terms of competitiveness in comparison with non-EU fleets who are not bound by the same rules and limits.

Most of the objectives of the VME Regulation remain relevant today, although these would benefit from an expansion as environmental and technological developments in the field have caused additional needs and challenges to be addressed. For instance, remaining challenges pertaining to the VME Regulation include:

- The lack of a compilation of scientific information and mapping of the location of VMEs and scientific cooperation and knowledge sharing with bringing that information to the attention of relevant bodies and flag states;
- The lack of provisions for financial and/or technical support for scientific research on VMEs;
- The adjustment of gears to selective depths to reduce contact with vulnerable benthic ecosystems.
- The adjustment of monitoring and control systems to take into account the technological developments, such as electronic monitoring;
- The inclusion of key definitions to draw a clearer picture on where and how the Regulation in being applied;
- The reflection of environmental threats other than fishing such as, land waste, pollution, illegal fishing, climate change impacts, global warming, ocean acidification.
- The inclusion of anthropogenic activities, other than fishing with bottom gears.

The effectiveness of the EU intervention in support of the protection of vulnerable marine ecosystems has been affected by several factors: on the one hand, the influence in shaping regional and multilateral implementation of the relevant rules, the advancement of research and science in respect of the importance of the VMEs and the impacts of bottom fishing activities thereof, the raising of awareness, as well as the introduction of restrictive management measures, have had a positive impact for the protection and conservation of these ecosystems. On the other hand, factors such as the unlevel playing field created by the VME Regulation, the limited application to a very limited number of Member States, the difficulties in implementation, enforcement, surveillance, and control, as well as the lack of clear definitions have had a negative impact on the realisation of the Regulation's objectives.

In terms of efficiency, the evaluation did not manage to gather adequate information to assess the cost-effectiveness of the VME Regulation. The fact that only very few stakeholders, including only a couple of Member States, participated in the consultation activities and that it would be up to Member States to calculate the costs, added to the problem of insufficient feedback. The limited feedback received indicated that most measures can be considered efficient by taking into account that the benefits stemmed from the regulatory framework outweigh or match the costs. Nonetheless, there were also indications that the EU intervention created additional administrative burdens and bureaucratic procedures to national authorities and fishing businesses (e.g. presentation of fishing plans, prior impact assessments, reporting obligation etc.), which might render the implementation of the measures malfunctional and should potentially be simplified or reduced.

The VME Regulation seems to be coherent and in line with the wider international policy framework as well as with most EU policies and legal structures, but, as indicated above, a certain degree of overlap exists between the EU intervention under question and other recent EU legislation. The broad EU intervention in favour of the protection and conservation of vulnerable marine ecosystems in the high seas established a common direction and ambition for the development of the fisheries management and marine environmental protection sectors. However, this direction has been somewhat affected by the introduction of similar EU legislation dealing with rules and processes for the management of the external fishing fleets, which, as indicated above, creates overlaps and sometimes confusion to national authorities when trying to implement the set rules.

Finally, the VME Regulation provided EU added value in particular in terms of defining a common legal framework and set of guidelines for Member States. The broader EU intervention was crucial for the evolution of the above-mentioned sectors and for spearheading policy developments in other relevant regional organisations. The EU managed to hold a global leadership role on fisheries management and marine environmental protection and achieve – even if to a certain extent – a level of protection, which possibly could not have been achieved should there be a fragmented legal framework based on national rules and policies. The withdrawal of the EU intervention would have negative consequences worldwide, as the EU is an important global actor, given the size of its long-distance fishing fleets and the prominent participation in RFMOs. Internally, it would probably result in serious backtracking regarding progress and in the decrease of the protection standards given the possible legal uncertainties that might emerge.

However, a limited number of stakeholders expressed the view that the absence of the VME Regulation would not result in essential changes at the expense of VMEs – except perhaps for the observer's coverage system –given that the national measures in place for the same objectives could be considered adequate. In particular, the prior impact assessments and scientific advice that are required by the national regulatory framework would suffice to compensate for the absence of the VME Regulation and properly protect VMEs. Also, the absence of the VME Regulation would assist in the reduction of administrative burdens (e.g. presentation of fishing plans, reporting obligation, etc).

5.2 Lessons learned

First, the most important lesson drawn from this evaluation exercise is that the very narrow application of the VME Regulation to a handful of Member States, along with the very technical nature of the topic and the very small and distant geographical area concerned, led to difficulties in collecting sound information and engaging with involved stakeholders. Despite the efforts to gather information both through an external contractor and via Commission-led activities, the outreach to stakeholders that are genuinely interested and practically engaged with the issues at hand and therefore able to provide reliable evidence has proven problematic. This is also closely related to the lack of consistent reporting – and even replying to Commission reminders – by most Member States.

Furthermore, the implementation of the VME Regulation is largely based on available scientific information. With the fast-paced development of technology and the ever-evolving policy and challenges, it is clear that the need to collect, aggregate, and make accessible fragmented data in a harmonised way across Europe and the engaged stakeholders (principally Member States) is and will remain relevant. The amount of data and knowledge required for the identification and assessment of the state (and progress in case of area closures) of vulnerable marine ecosystems in distant areas for the proper implementation of the Regulation is significantly high, while the technical and financial means are limited. In addition, a holistic protection of the VMEs in the high seas would require taking into account emerging environmental threats by adapting it to the most recent developments, international standards and best practices. This covers also environmental changes that stem from human activities beyond fishing activities such as pollution, climate change, deep-sea mining, oil and gas extraction, etc.

Some provisions of the VME Regulation may also create administrative burdens and costs to the national authorities and fishing industries. For example, the costs related to the scientific research and the observer's coverage system may become considerable and

create difficulties in properly implementing the VME Regulation. Also, the lack of personnel in conjunction with the frequency of the reporting obligation and the details of the requested information as well as the preparation of detailed fishing plans present a significant addition to bureaucracy for some stakeholders.

In an effort to provide a more comprehensive framework for the regulation of the fishing fleets' activities, the EU's most recent regulatory set up may create overlaps with older legislation that need to be addressed (e.g. SMEFF Regulation). The implementation of the VME Regulation is possibly hindered by such uncertainties, which at times might create confusion to the different stakeholders when it comes to fulfilling various obligations and following various steps under different frameworks.

Despite the above challenging areas, the VME Regulation has brought a positive impact in the protection of vulnerable marine ecosystems, and yields benefits in terms of creating a general regulatory framework for fisheries management and reducing legal and policy uncertainty to the extent possible. The VME Regulation has been a pioneering instrument at the time of its adoption as it set forth fundamental legally binding rules for the protection of vulnerable marine ecosystems in the high seas and inspired the development of similar policies in other regional organisations.

ANNEX I: PROCEDURAL INFORMATION

- *Lead DG, Decide reference:* Directorate-General for Maritime Affairs and Fisheries PLAN/2017/2197
- *Derogations granted and justification:* Not applicable. This evaluation has been carried out according to the Better Regulation guidelines and their Toolbox.
- *Organisation and timing:* The evaluation has been steered by DG MARE since December 2017, when the process was launched in Decide, under the scrutiny of an inter-service group comprising of representatives of DG Environment, DG Maritime Affairs and Fisheries, Legal Service and Secretariat-General. External consultants carried out an evaluation support study between January 2020 and June 2023. Between July 2023 and February 2024, the Commission-led public consultation was prepared and carried out. The Inter-service Group followed closely the drafting of this evaluation and this SWD in four meetings during 2023 and 2024 as well as written consultations.
- *Consultation of the Regulatory Scrutiny Board: Not applicable*
- *Evidence, sources, and external expertise:* The study "Improving the Environmental Sustainability of Deep-Sea Fisheries with emphasis on the Conservation of Vulnerable Marine Ecosystems " provided some but weak support for the Commission Evaluation of the VME Regulation due to the low rate of responses from stakeholders. The study was carried out under the Specific Contract EASME/EMFF/2019/1.3.2.2/05 and Implementing Framework Contract EASME/EMFF/2019/014. The contract was carried out by a consortium of experts led by AZTI (AZTI, CEFAS, CSIC, IEO, IPMA, IRD, MRAG-EU and WMR). The public consultation led by the Commission was an additional effort to gather information, evidence, and validating data and preliminary findings, in the framework of this evaluation.

ANNEX II. METHODOLOGY AND ANALYTICAL MODELS USED

The methodology used to perform this evaluation is based on the following steps: (1) structuring, (2) evidence gathering, (3) analysing, (4) judging, and (5) reporting.

The structuring of the document follows the standard template provided by the Better Regulation guidelines i.e. (1) the purpose of the evaluation is first described, then (2) the outcome of the intervention at the time of its inception is reminded and (3) the evolution of the situation over the evaluation period described. Then (4) the evaluation findings are presented and (5) the conclusions drawn.

Regarding evidence gathering, for section (2) (3) and (4), legal texts, policy documents, an impact assessment, annual reports, a desktop study, a call for evidence, and stakeholder consultations have been used for the analysis. These can be found in the section "References".

The evaluation/desktop study was performed by an external contractor and included, among the deliverables, a desktop study and a stakeholder consultation. Between January 2020 and June 2023, the evaluation of the VME Regulation (EC 734/2008) was carried out, as part of a bigger study on the conservation

of vulnerable marine ecosystems, with the purpose to evaluate its performance and functioning. The evaluation was performed according to the evaluation criteria laid out in the Better Regulation Guidelines of the European Commission: Relevance, EU added value, Effectiveness, Efficiency and Coherence.

As the study achieved limited participation and to complement the information provided by the study, as well as the reporting to the Commission by the Member States pursuant to Article 12 of the VME Regulation, the Commission launched a public consultation to collect further input to the evaluation.

The aim of the public consultation (call for evidence and online questionnaire) was to gather inputs from all relevant stakeholders to evaluate the implementation of the EC Regulation 734/2008. More specifically, the public consultation aimed at contributing to the analysis of the effectiveness, efficiency, EU added-value, relevance, and coherence of the VME Regulation and, thus, these were the five evaluation criteria used in the online questionnaire. It combined closed multiple-choice questions, a limited number of questions to be answered via open-ended responses as well as ranking questions. The public consultation was open from 13 November 2023 to 5 February 2024. The call for evidence was made available in all 24 official EU languages. The online questionnaire was made available in five key languages (i.e., English, French, German, Spanish and Portuguese); although replies could be made in any of the 24 official EU languages.

The detailed results of the public consultation are available under Annex V.

ANNEX III. EVALUATION MATRIX AND, WHERE RELEVANT, DETAILS ON ANSWERS TO THE EVALUATION QUESTIONS (BY CRITERION)

The evaluation matrix refers to the evaluation activities undertaken by the Commission to complement the desktop study carried out by the external contractor. It is therefore based only on the replies received by the Commission in this context. The evaluation matrix of the evaluation carried out by the external contractor can be found in the Annex to the report of the external desk study.[41]

Effectiveness	
Evaluation question(s)	To what extent the VME Regulation has succeeded in protecting deep-sea vulnerable marine ecosystems in the high seas outside of the RFMO/As?
Main sub-question(s)	- Has the VME Regulation succeeded in strictly regulating bottom fishing activities of EU Member States in the high seas outside of RFMO/As? - Has the VME Regulation succeeded in promoting scientific research on vulnerable marine ecosystems in the high seas outside of RFMO/As?

[41] *See* footnote 2, pp. 1112-1128.

	- Has the VME Regulation succeeded contributing to the protection of deep-sea ecosystems' integrity from significant degradation (i.e. ecosystem's function or structure, loss of species richness)? - What are the main factors that may have affected positively or negatively the realisation of the objectives of the VME Regulation (e.g. conservation of marine living resources in the high seas, protection of vulnerable marine ecosystems from significant adverse effects of bottom fishing gears, regulation of bottom fishing activities of Member States)?
Indicators/descriptors	% of stakeholders agreeing that the VME Regulation has succeeded in protecting deep-sea vulnerable marine ecosystems in the high seas outside of the RFMO/As Evidence and examples of practices and approaches which contribute positively or negatively to the conservation of vulnerable marine ecosystems in the high seas outside of the RFMO/As
Judgement criteria	Stakeholders somewhat agree that the objectives have been appropriate and relevant for successfully protecting deep-sea vulnerable marine ecosystems in the high seas outside of the RFMO/As. However, the limited number of replies does not allow for a sound conclusion.
Sources	Stakeholder consultations: PC, targeted consultations Call for evidence
Efficiency	
Evaluation question(s)	To what extent the measures included in the VME Regulation have been efficient in achieving the Regulation's objectives?
Main sub-question(s)	- Has the conduct of impact assessments of the foreseen fishing activities prior to the issuance of the special fishing permit been efficient? - Has the prohibition of the use of bottom gears, where no proper scientific assessment has been carried out been efficient? - Has the cessation of fishing activities in case of unforeseen encounters with vulnerable marine ecosystems been efficient? - Has the identification of areas that shall be closed to fishing with bottom gears been efficient?

	- Has the presence of observers on-board vessels, which have obtained a special fishing permit been efficient? - Has The obligation of EU Members States to provide information on their fishing activities every half calendar year to the European Commission been efficient? - To what extent has the VME Regulation managed to balance costs (e.g. administrative, financial etc.) and benefits (e.g. protection of marine environment, equal access to marine resources etc.)
Indicators/descriptors	% of stakeholders agreeing that the measures of VME Regulation have succeeded in achieving the Regulation's objectives Evidence and examples of practices and approaches indicating the proportionality of the costs and benefits of each measure.
Judgement criteria	Stakeholders somewhat or fully agree that the measures have been efficient in achieving the objectives of the Regulation. However, the limited number of replies does not allow for a sound conclusion.
Sources	Stakeholder consultations: PC, targeted consultations Call for evidence
Relevance	
Evaluation question(s)	To what extent are the Regulation's objectives still relevant?
Main sub-question(s)	- Is it still relevant to strictly regulate bottom fishing activities of Member States in the high seas outside of RFMO/As? - Is it still relevant to promote scientific research on vulnerable marine ecosystems in the high seas outside of RFMOs/As? - Is it still relevant to contribute to the protection of the ecosystems' integrity from significant degradation? - Is the scope of the Regulation still relevant (i.e. the Regulation applies to Community fishing vessels carrying out fishing activities with bottom gears in the high seas outside RFMOs/As)?

Indicators/descriptors	% of stakeholders agreeing that the objectives of the VME Regulation are still in match with current and foreseeable future needs Evidence and examples of practices and approaches indicating the relevance of the VME Regulation's objectives.
Judgement criteria	Stakeholders agreed that the objectives of the VME Regulation are still mostly relevant today. However, the limited number of replies does not allow for a sound conclusion.
Sources	Stakeholder consultations: PC, targeted consultations Call for evidence
Coherence	
Evaluation question(s)	To what extent is the VME Regulation coherent with other EU legislation and international obligations?
Main sub-question(s)	- Are there any overlapping or contradictory obligations contained in the VME Regulation in relation to other pieces of EU legislation? - Are the obligation under the VME Regulation in accordance with international obligations?
Indicators/descriptors	% of stakeholders agreeing that the obligations under the VME Regulation are in consonance with other EU legislation and international obligations. Evidence and examples of practices and approaches indicating the relevance of the VME Regulation's objectives.
Judgement criteria	Stakeholders somewhat agreed that the VME Regulation is coherent with other EU legislation and international obligations. However, the limited number of replies does not allow for a sound conclusion.
Sources	Stakeholder consultations: PC, targeted consultations Call for evidence

EU added value	
Evaluation question(s)	To what extent the adoption of the VME Regulation at EU level has achieved better results over those that could have been reasonably expected if Member States had enacted national laws and policies on the same subject?
Main sub-question(s)	- Have the objectives of the VME Regulation to protect vulnerable marine ecosystems from significant adverse impacts from bottom fishing gears been achieved sufficiently by Members States acting individually? - Would the absence of the VME Regulation decrease the interest of (some) Member States to take action to protect vulnerable marine ecosystems in the high seas outside RFMO/As from bottom fishing activities? - Does the VME Regulation manage to achieve a level playing field among Member States using bottom fishing gears in the high seas outside RFMO/As (in terms of permitting, monitoring, reporting, enforcement, administrative procedures etc.)? - Is it still valid to assume that the objectives of the VME Regulation can best be met by action at EU level? - Would there be significant negative consequences of stopping applying the VME Regulation?
Indicators/descriptors	% of stakeholders agreeing that the VME Regulation at EU level brought added value. Evidence and examples of practices and approaches indicating the EU added of the VME Regulation.
Judgement criteria	Stakeholders agreed that the VME Regulation brought EU added value. However, the limited number of replies does not allow for a sound conclusion.
Sources	Stakeholder consultations: PC, targeted consultations Call for evidence

ANNEX IV. OVERVIEW OF BENEFITS AND COSTS

Table 1. Overview of costs and benefits identified in the evaluation					
		Businesses and fishers		Administrations	
		Qualitative	Comment	Qualitative	Comment
Prior assessments of the activities as a condition for their authorisation along with a programme of identification of ecosystems and area closures[42]					
Costs: direct and enforcement costs linked to administrative resources and the implementation of the measure. **Benefits:** the requirement of a more precautionary incorporation of scientific information and advice into the fishery management and control process. It also promotes a more committed investment in scientific advice and research.	**Type:** **Recurrent**	The impact of the prior assessment requirement on fishers increases operational costs, linked to the presentation of fishing plans.	There are no available data for the quantification of the monetary value of this cost. The impact assessment prior to the adoption of the VME Regulation does not refer to certain or range of amounts and no additional information were received under the current evaluation.	A prior assessment, i.e. for flag States to assess the activities as a condition for their authorisation together with a commitment to continue a programme of identification of ecosystems and area closures is demanding in terms of administrative resources at Member State level.	There are no available data for the quantification of the monetary value of this cost, however, since Member States issue the fishing permits and implement the assessment process the related costs therefore fall upon them. The impact assessment of the VME Regulation indicated that performing prior impact assessments would increase the workload for Member States, even if the fisheries concerned are relatively limited. This is due to the fact that until then Member States were not required, under CFP rules, to apply a prior assessment of environmental impacts as a condition for authorising any individual fishing activities.

[42] *See* footnote 13, p. 13.

					The feedback received by some Member States and businesses during the consultations indicated that while these costs increase the burden in terms of implementing the VME Regulation, the calculation of these costs is difficult to be performed.

Table 1. Overview of costs and benefits identified in the evaluation					
		Businesses and fishers		Administrations	
		Qualitative	Comment	Qualitative	Comment
Area closures[43]					
Costs: indirect costs linked to compliance. **Benefits:** The measure can result in more than compensating benefits from the conservation of invaluable marine biodiversity and genetic resources, and also as reserves where fishery resources can thrive and replenish the stocks.	**Type:** **Recurrent**	Area closures significantly restrict catches of deep-sea species. Fishers targeting them are bound to see their returns diminished and subsequently their potential income.	Certain deep-sea species are targeted specifically in sensitive areas such as seamounts (e.g. orange roughy, alfonsinos, oreos). Other deep-sea species targeted by the fleets are frequently associated with deep water corals (e.g. blue ling). There are no available data for the quantification of the monetary value of this cost. The decrease of catches and therefore the possible decrease of income for fishers was part of the impact assessment prior to the adoption of the VME Regulation, however, with no concrete numbers.	**N/A**	**N/A**

[43] *See* footnote 13, p. 13.

Table 1. Overview of costs and benefits identified in the evaluation					
		Businesses and fishers		Administrations	
		Qualitative	Comment	Qualitative	Comment
Scientific research[44]					
Costs: direct and enforcement costs linked to the implementation of the assessment requirement. **Benefits:** the collection of the best available scientific information and advice to assess the location of the fishing activities and evaluate if destructive impacts are likely to occur.	**Type:** **Recurrent**	**N/A**	**N/A**	Member States need to invest in scientific research in support of the assessment of environmental impacts of bottom-fishing. However, of note is that, according to the impact assessment prior to the adoption of the VME Regulation, given that the Member States most concerned already undertake research programmes to this end not only nationally but also in other fora (e.g. RFMOs), the scientific research in support of prior impact assessments can support this trend by making it especially relevant in operational and regulatory terms, without necessarily increasing costs and human resources already allocated by those Member States to this task.	There are no available data for the quantification of the monetary value of this cost, however, since Member States are responsible for the performance of scientific research the related costs therefore fall upon them. The feedback received by a couple of Member States during the consultations indicated that costs related to the development and implementation of the scientific research programmes are among the main burdens linked to the implementation of the VME Regulation.

[44] *See* footnote 13, p. 13.

Table 1. Overview of costs and benefits identified in the evaluation					
		Businesses and fishers		Administrations	
		Qualitative	Comment	Qualitative	Comment
Monitoring, surveillance, and control requirements[45]					
Costs: direct and enforcement costs linked to administrative resources and the implementation of the measure. **Benefits:** the collection of scientific data for the identification of the ecosystems and their subsequent protection through area-based measures. The very nature of the substantive requirement at stake – avoiding fishing on vulnerable marine ecosystems – makes it practically indispensable to have observers on board to monitor the activities.	**Type:** **Recurrent**	All EU vessels over 15m in length are already required to operate a VMS. However, the increase of the frequency of position reporting entails extra costs but not considerable. As to on-board observers, this is the requirement that probably entails the most significant economic impacts on the fleets. Observer programmes are costly and often publicly funded, at least partially.	A 100% coverage of the fleet represents an extra cost in operational terms. Although the fleets already implement an observer programme, its coverage is only partial. Some stakeholders indicated that the required level of observer coverage under the VME Regulation in terms of mobilisation of human resources and economic costs does not justify the return it produces. There are no available data for the quantification of the monetary value of this cost. The impact assessment prior to the	According to the impact assessment prior to the adoption of the VME Regulation, Member States might be required to arbitrate with the fishing sector and possibly assume some of the financial burden of the observer's programme resulting from the Regulation. There are no available data for the quantification of the monetary value of this cost, however, since Member States are (partially) responsible for the 100% coverage the related costs affect them too.	The feedback received by some Member States and businesses during the consultations indicated that the costs of observers is an important number to take into account in this evaluation. However, no concrete numbers were shared.

[45] *See* footnote 13, p. 13.

			adoption of the VME Regulation does not refer to certain or range of amounts and no additional information were received under the current evaluation.		

Table 1. Overview of costs and benefits identified in the evaluation					
		Businesses and fishers		Administrations	
		Qualitative	Comment	Qualitative	Comment
Reporting obligation					
Costs: direct and enforcement costs linked to administrative resources and the implementation of the measure. **Benefits:** the collection of information regarding the operational realisation of the VME Regulation, the monitoring, and evaluation of Member States' fishing activities.	**Type:** **Recurrent**	**N/A**	**N/A**	Member States are required to submit to the Commission a report on the fishing activities falling under the scope of application of the VME Regulation. Member States are also required to inform the Commission whether or not they have authorised any fishing activities in the geographical area of the VME Regulation. This requirement relates mostly to the mobilisation of human resources.	While the VME Regulation usually only concerns a handful of Member States at best, all Member States are required to allocate some human resources to inform the Commission about any fishing activities taking place under the scope of application of the VME Regulation. Even though most of the Member States have nothing to report, they need to spend some time and resources for this exercise raising thus the administrative burdens imposed by this Regulation. For this reason, often, Member States (especially landlocked) do not report at all. There have been instances when some Member States have requested to stop reporting given that they are not at all concerned by this Regulation.

Table 2: Potential simplification and burden reduction (savings) *Identify further potential simplification and savings **that could be achieved** with a view to make the initiative more effective and efficient without prejudice to its policy objectives[46].*						
	Citizens/Consumers/Workers		Businesses		Administrations	
	Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
Description: The reporting obligation under Article 12 could be targeted only to those Member States directly affected by the VME Regulation or the frequency of the reports could be reduced.						
Type: One-off	**N/A**	**N/A**	**N/A**	**N/A**	Approximately 1000 EUR per year.	An internal simplification exercise based on average tariffs showed that the expected savings from limiting the reporting obligation only to those Member States concerned would amount to minimal savings.

[46] This assessment is without prejudice to a possible future Impact Assessment.

ANNEX V. STAKEHOLDERS CONSULTATION - SYNOPSIS REPORT

Two consultations and a call for evidence have been carried out, both online:

1) a consultation organised in the context of the external desk study.[47]
2) a public (stakeholder) consultation organised by the European Commission services between 13 November 2023 and 05 February 2024. The factual summary report of the public consultation is available at: Protecting vulnerable marine ecosystems in the high seas from bottom trawling – evaluation (europa.eu) . The contributions received cannot be regarded as the official position of the Commission and its services and thus does not bind the Commission nor that the contributions can be considered as a representative sample of the EU population.
3) a Call for Evidence to inform the public and stakeholders about the Commission's work, so they can provide feedback and participate effectively in the consultation activities.

While the first consultation collected 36 responses, only four completed the survey in full. The remaining 32 provided partial responses usually the first six questions i.e. their personal details. The four stakeholders that fully completed the survey included two from the fisheries sector, one from an NGO and one scientist. The second public (stakeholder) consultation was open to the public and obtained only 10 responses.

The questionnaire of the external consultation also included questions on the evaluation criteria, covered a broader scope and were more targeted on the different measures and practices included in the provisions of the VME Regulation. The processing of data and analysis of results can be found in the annex of the report of the external desk study.[48]

The two consultations provide therefore slightly different angles in terms of content; however, the low response rate does not provide for a basis for sound conclusions.

The public consultation undertaken by the Commission aimed at complementing the information provided by the study, as well as the reporting to the Commission by the Member States pursuant to Article 12 of the Regulation. The consultation's objective was to gather inputs (informed views, evidence, practical experience and data) from all relevant sources to evaluate the implementation of the VMEs Regulation. More specifically, the inputs would contribute to the analysis of the effectiveness, efficiency, EU added-value, relevance and coherence of the EU Regulation. The main goals of the consultation were to:

- obtain, analyse and integrate the views and experiences of those who are directly affected by the implementation of the VME Regulation;
- gather the views of citizens and the wider stakeholder's community on the issues related to the implementation of the VME Regulation;
- identify the benefits, costs and burdens generated by the current and future implementation of the VME Regulation;

[47] *See* footnote 2.

[48] *Idem*.

- detect issues of complexity in the applicability, implementation, and enforcement of the Regulation.

As the Regulation only affects areas in the high seas, where no RFMO/A exists, in practice FAO area 41 in the South-West Atlantic, and is of concern only to those EU Member States whose vessels fish in that area, the evaluation and thereby the requested contributions from Member States and stakeholders focused accordingly (i.e. the concerned EU Member States were specifically targeted). Relevant inputs and lessons learnt from other activities having a significant impact on the protection of vulnerable marine ecosystems in the high seas or from other geographical areas were also be requested to understand cumulative effects.

The survey of the consultation was open to the public. The main stakeholders interested in the evaluation of the VMEs Regulation were identified to be:

- the representatives of the Member States' administrations in charge of implementing the Regulation, especially of those Member States fishing in the area of concern of the VME Regulation;
- the fishing industry, which is active in the concerned high seas areas and uses bottom gears as well as its professional associations; - relevant regional and international organizations like RFMOs and FAO;
- Advisory Councils (I.e., LDAC) under the Common Fisheries Policy;
- non-governmental organizations (civil society); and
- scientists working on marine biological resources and/or the sustainability of marine resources.

The consultation activities included a Commission-led public online survey consultation and targeted consultations. The public online survey was triggered by the publication of a structured questionnaire on the Commission's dedicated EU Survey website. The survey was also highlighted on the website of Directorate General for Maritime Affairs and Fisheries (DG MARE) and on communication materials (i.e. Have Your Say portal, Maritime Affairs and Fisheries newsletter). The survey was also communicated to stakeholders through bilateral exchanges. The questionnaire was made available in 5 EU languages, namely English, French, German, Spanish, and Portuguese. The two last languages targeted Member States and stakeholders with possible fishing activities in the area in the focus of the Regulation.

The targeted consultations addressed a limited number of stakeholders (i.e. relevant civil society organisations, scientific organisations, Advisory Council(s) under the Common Fisheries Policy and Member States' administrations). These consultations run by DG MARE with the aim to go into more technical and specific issues with the limited group of relevant addressees. They were conducted via online interviews or written contributions. The interviews were based on a set of questions that were shared in advance with the stakeholders for better preparation. The targeted consultations were carried out in English and run as part of the public consultation, thus in the same timeframe as the online survey.

The public consultation was made available via the Commission's central consultation (EUSurvey) website. It was notified to the Member States via a letter from DG MARE to the national authorities along with the request to comment on the implementation review report. The consultation was also highlighted in the Council meetings and was also publicised on social media.

The processing of data in the Commission-led consultation is standard i.e. percentages of respondents were calculated for the different possible answers. The percentages below report percentages based on the number of respondents who have expressed an opinion. The questionnaire was strongly focussed

on collecting information for the purpose of the evaluation and was organised along the five evaluation criteria: effectiveness, relevance, coherency, efficiency, and EU-added value.

In total, 10 stakeholders responded to the questionnaire. Respondents were asked to describe themselves as academic/research institution, business association, company/business, consumer organisation, EU citizen, non-EU citizen, environmental organisation, non-governmental organisation (NGO), public authority, trade union or other. Of these, 3 answered as members of a NGO, 2 respondents came from an academic/research institution, and another 2 answered on behalf of business associations. The remaining 3 answered as stakeholders coming from a company and/or as citizens. The questionnaire also included questions on the scope (e.g., international, national, local) and level of governance (e.g., local authority, local agency, parliament) of the respondent's profile. However, all respondents indicated that these questions were not applicable to them. It is worth noting that contributions from micro size entities accounted for the biggest proportion of the total replies received. 50% (5) of the respondents represented a micro-organisation (1-9 employees), 10% (1) a medium sized entity (50-249 employees), and 30% (3) a large sized organisation. The remaining 10% (1) did not fall into one of the categories.

Geographically, most responses came from Germany (30%), Belgium (20%), Switzerland (20%), France (10%), Portugal (10%) and Spain (10%).

Regarding the question on the successfulness of the VME Regulation in achieving its objectives, namely, to protect deep-sea vulnerable marine ecosystems in the high seas outside of RFMO/As. Most of the respondents were either neutral (30%) or somewhat agreed (30%) to the fact that the VME Regulation has succeeded in strictly regulating bottom-fishing activities of EU Member States in the geographical areas of interest. 40% of the respondents somewhat agreed that the VME Regulation has succeeded in promoting scientific research on vulnerable marine ecosystems in the high seas outside of RFMOs/As, while 30% of the respondents think that the VME Regulation has somewhat succeeded in contributing to the protection of deep-sea ecosystems' integrity from significant degradation (i.e., ecosystem's function or structure, loss of species richness).

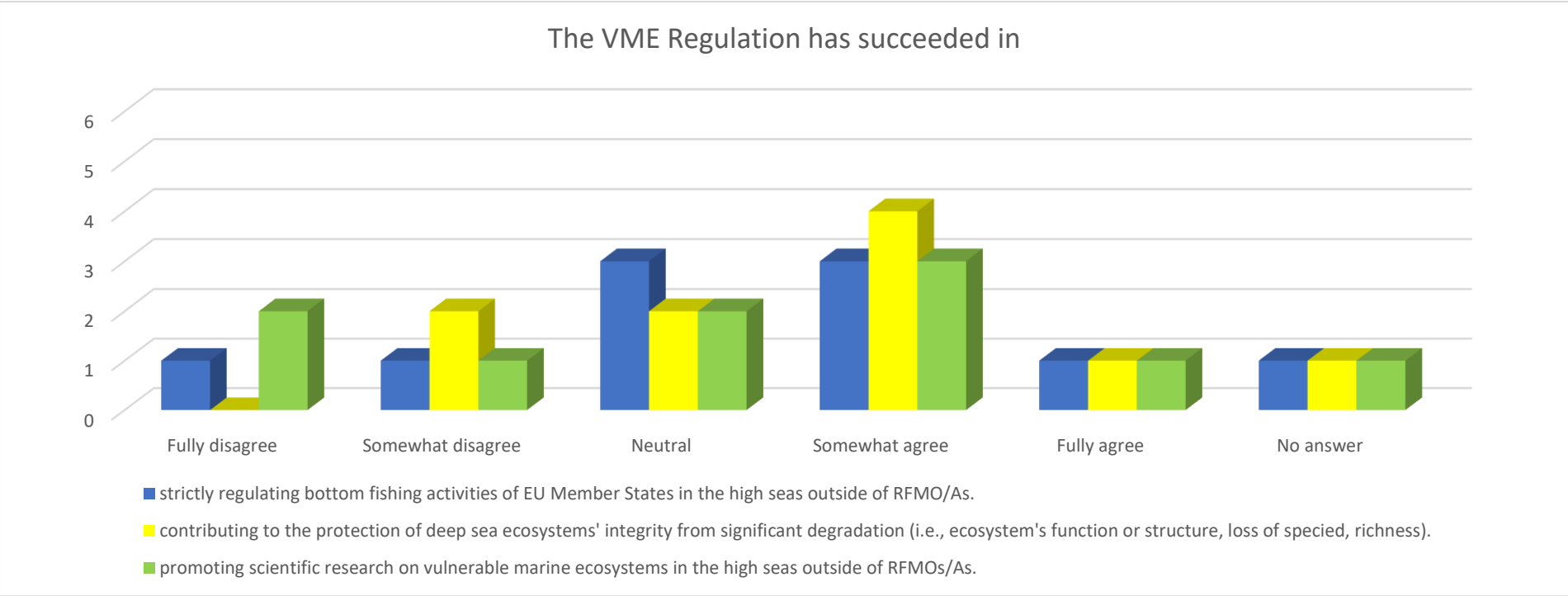

Figure 6 - Effectiveness of the VME Regulation in achieving its objectives.

Participants were asked to indicate up to five factors that may have affected positively or negatively the realisation of the objectives of the VME Regulation, and briefly explain their responses. Participants were allowed to indicate both positive and negative factors. Out of the 10 replies received, 7 participants replied to these questions, without always giving an explanation for their answer, and indicated the following:

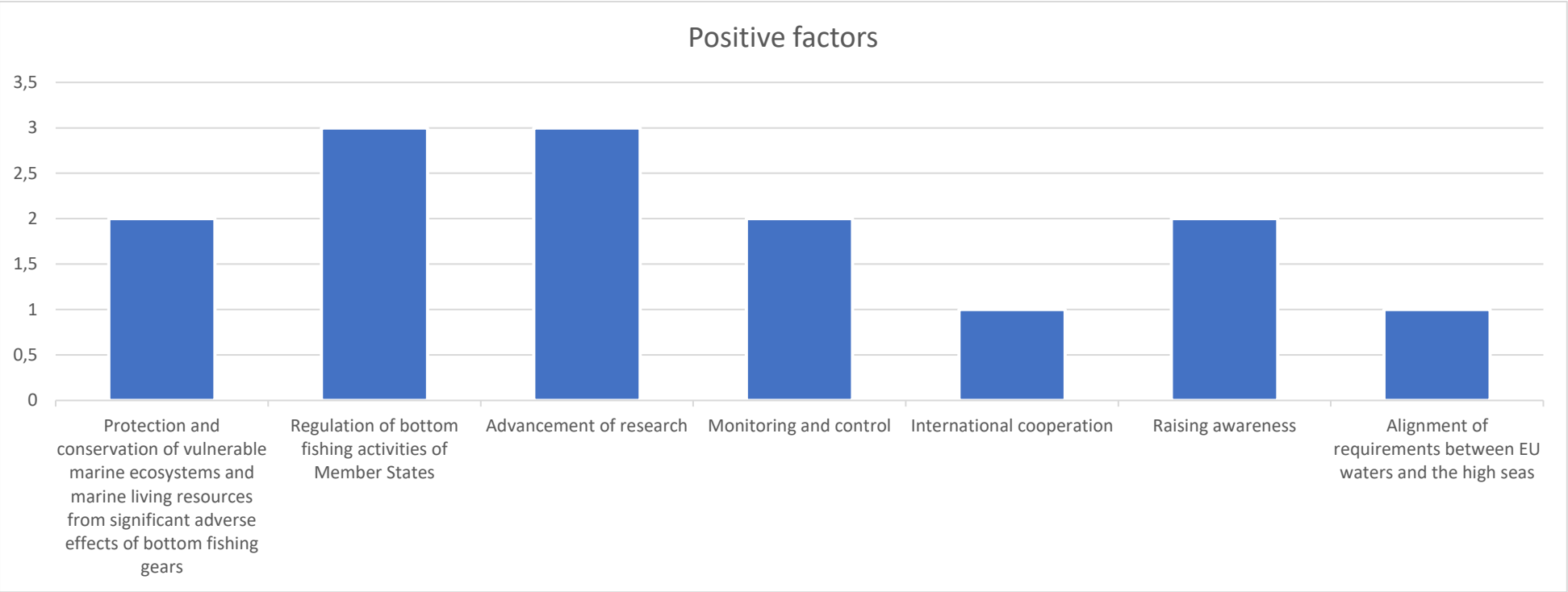

Figure 7 - Factors positively affecting the realisation of the objectives of the VME Regulation.

However, some of these answers only repeat the objectives of the VME Regulation (e.g. the regulation of bottom fishing activities of Member States, the protection of vulnerable marine ecosystems), adding therefore limited value to the evaluation.

The limited explanatory information provided by the respondents referred to the banning of bottom trawling and gillnets, the minimisation of the fishing footprint, the issuance of authorisations and control measures, the cooperation among fishing organizations to obtain a license under the VME Regulation or the cooperation of EU member authorities, and the development of scientific research due to its correlation with a fishing license under the Regulation.

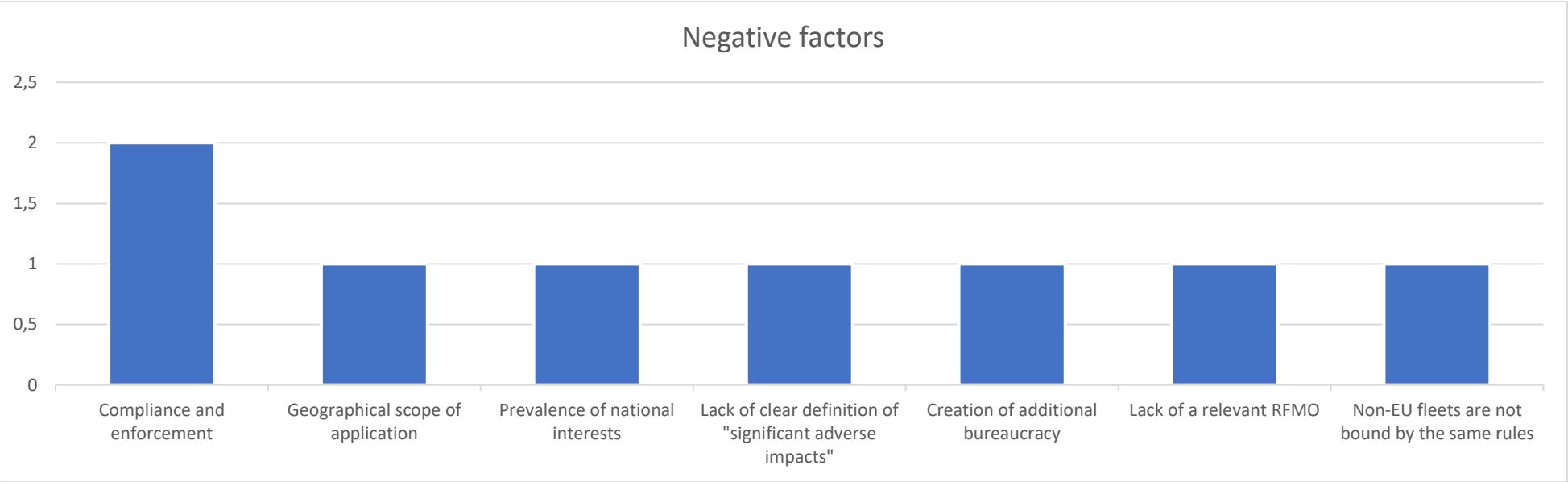

Figure 8 - Factors negatively affecting the realisation of the objectives of the VME Regulation.

Again, only some explanatory information were provided by the respondents indicating that there is insufficient compliance control and enforcement due to a lack of on-board observers, the marine area protected by the Regulation is too small, the administrative requirements arising from the application of the Regulation hinders its application, and that there is no level playing field between EU and non-EU fleets, which undermines the protection efforts.

The efficiency of the measures of the VME Regulation for the protection of the vulnerable marine ecosystems in the high seas was also addressed. The reply to this question should assess efficiency considering how proportional the costs of each measure are (e.g., budgetary costs, human resources needs, administrative burden etc.) in relation to the expected benefits (e.g. improved protection of the marine environment, increased economic income or other social benefits, increase in scientific understanding etc.) Most of the respondents somewhat or fully agreed that the encoded measures are efficient. Concerning the successfulness of the VME Regulation to balance costs (e.g., administrative, financial etc.) and benefits (e.g., protection of marine environment, equal access to marine resources etc.), 70% of the respondents did not provide an answer.

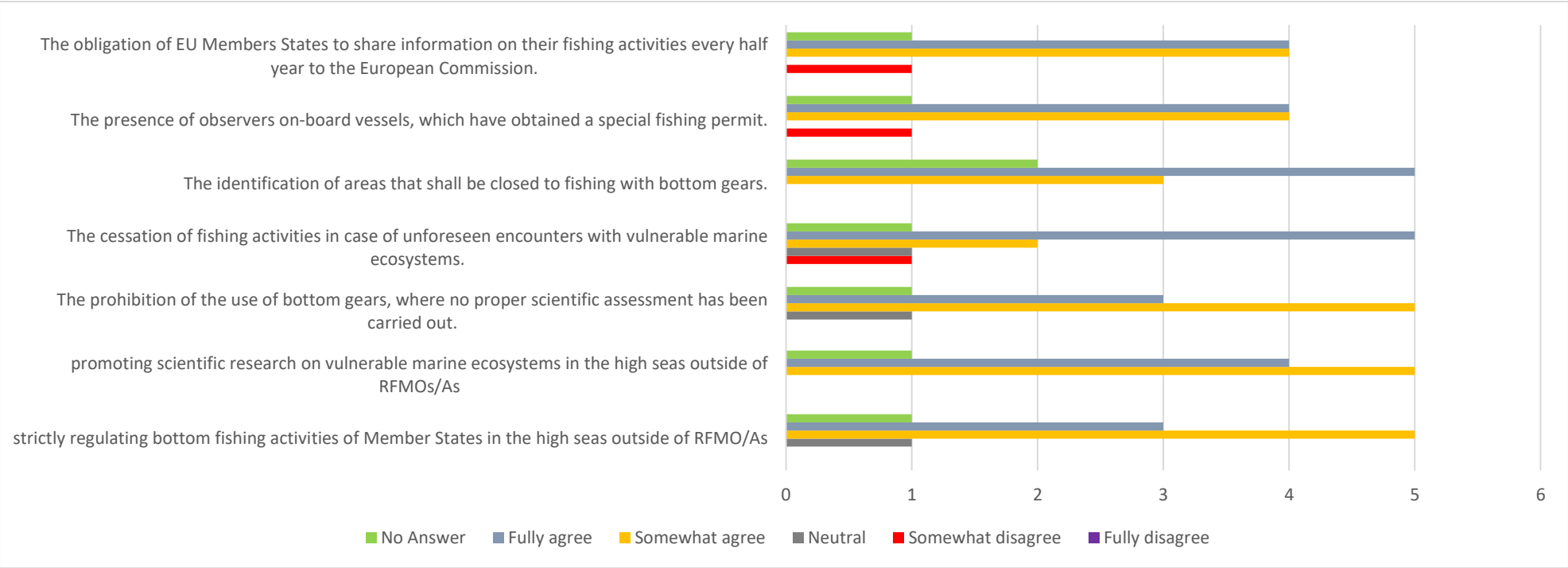

Figure 9 - Efficiency of measures encompassed in the VME Regulation.

The questionnaire also provided for an optional open-ended question for respondents to add further information on the provisions of the Regulation. Only two respondents replied to this question. One stated that while evaluating efficiency, prioritizing protection over economic goals is crucial. The prohibition of all deep-sea fishing practices in the future will lead to sustainability. The other highlighted that all bottom fishing vessels in the high seas should have to require permits indicating where they intend to fish. After that, an evaluation has to be initiated on whether VMEs are known or expected to exist within this region and whether scientific assessments have already been undertaken or not. In addition, it was underlined that due to insufficient surveillance and monitoring either all vessels bottom fishing in the high seas should have on board observers or bottom fishing in the deep sea should be banned completely.

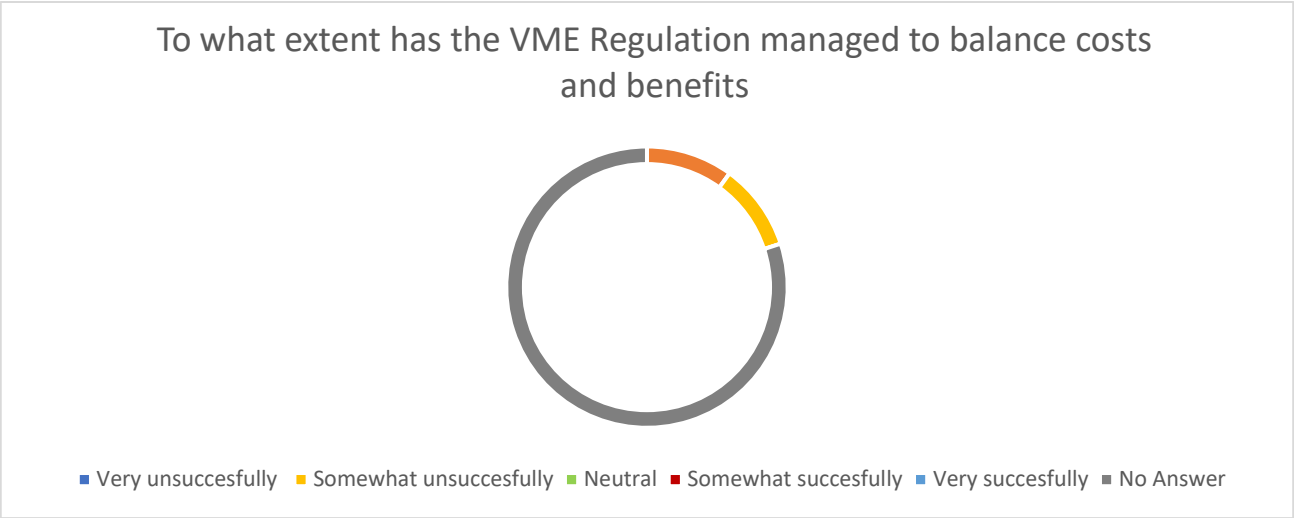

Figure 10 – Balance of costs and benefits.

Another open-ended question on the balancing of costs and benefits was included. Only one respondent provided further explanations. They stated that the costs of applying the Regulation are excessive and they affect the level playing field of the EU fleet in comparison with non-EU fleets operating in the area Another one provided an answer, however, it was not responding to the question of costs and benefits but rather on the Regulation's provisions and therefore the response was added above.

Regarding the relevance of the VME Regulation, the majority of the respondents answered that most of the measures are still relevant today.

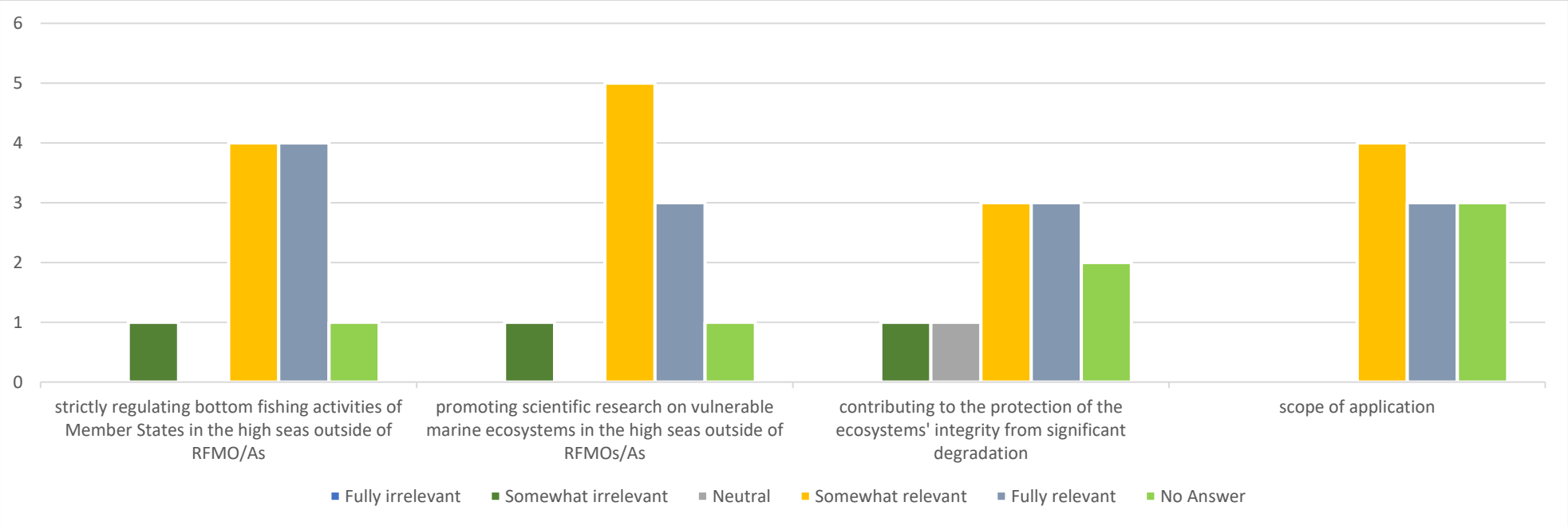

Figure 11 - Relevance of the measures encompassed in the VME Regulation as well as its scope.

Furthermore, the respondents shared their views regarding the coherence of the VME Regulation with other EU legislation and international obligations. With regards to EU legislation, half of the respondents replied positively, indicating that there are relevant overlaps, while for the international obligations, replies were split between a positive response and no answer.

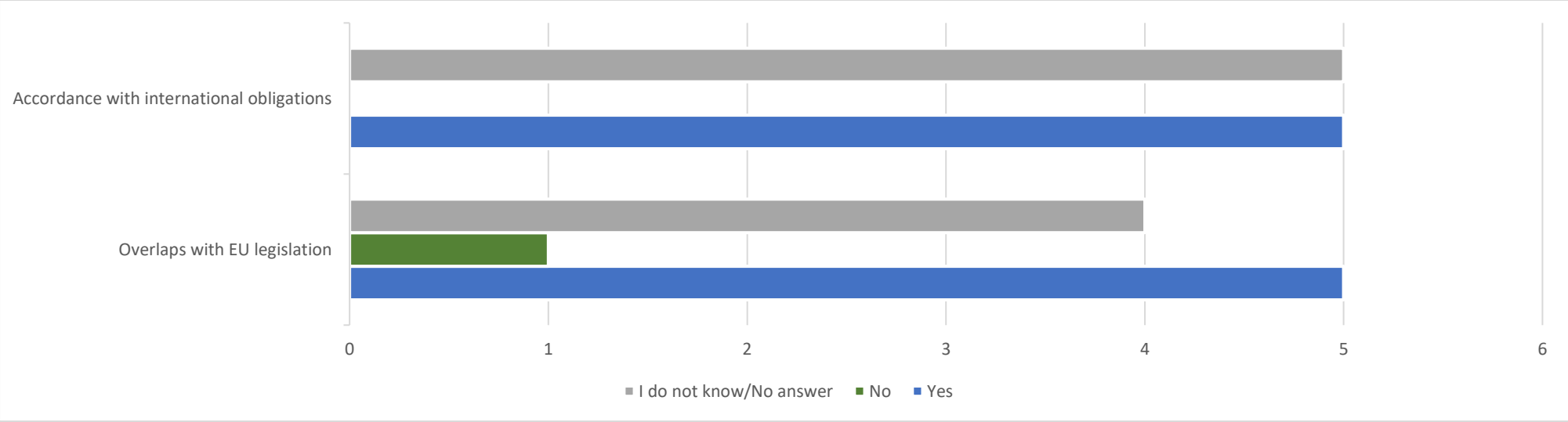

Figure 12 - Coherence of the VME Regulation with EU legislation and international obligations.

The questionnaire provided for an open-ended question on possible overlaps of the Regulation with other EU legislation. Five participants provided further information. The respondents indicated overlaps with EU Regulation 2017/24032 (SMEFF) (e.g. in terms of authorisations, monitoring and control activities), with EU Regulation 2016/2336 (DSAR), and on the policy for the decarbonisation of the fishing fleets given that bottom-trawling fishing vessels are carbon-consuming vessels.

Another open-ended question on the coherence between the Regulation and other international obligations was provided. Only one respondent provided further explanations stating that the measure of on-board observers is disproportionate. The limited interaction with VMEs given all the measures in place and the required level of observer coverage results in terms of mobilisation of human resources and economic cost does not justify the return it produces.

Finally, the EU added value of the VME Regulation was addressed, where most of the respondents agreed that the adoption of the VME Regulation at EU level has achieved better results over those that could have been reasonably expected if Member States had enacted national laws and policies on the same subject.

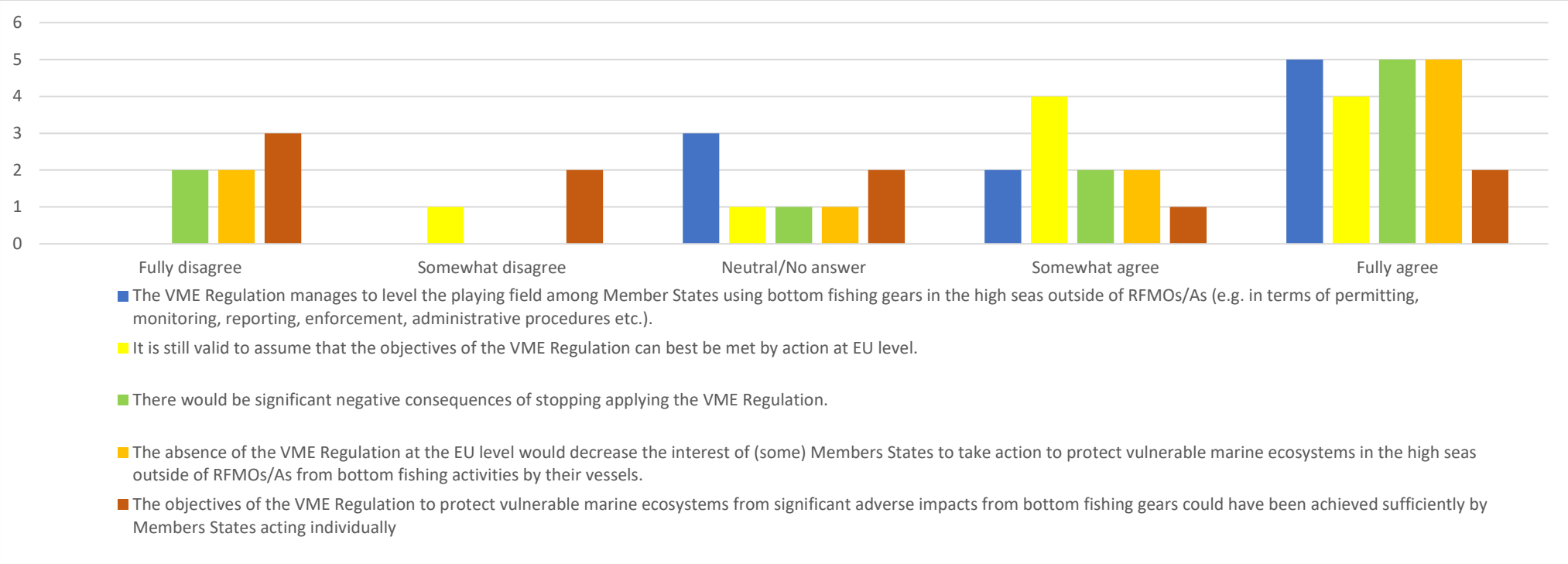

Figure 13 - EU added value of the VME Regulation

The questionnaire included an open-ended question for respondents to elaborate further on the EU added value of the Regulation. Only two respondents provided further information. One stated that halting the application of the VME Regulation would have severe drawbacks as this would leave it up to national legislation to regulate the protection of VMEs, which in turn might favour certain individual interests. The other respondent supported that there would be no negative impacts should the Regulation be halted.

The survey also allowed the participants to submit additional information in the form of a document. 4 out of 10 respondents submitted such a document. The summary of each of these documents is as follows:

Position paper | Der Deutsche Tierschutzbund

The position paper uploaded by Der Deutsche Tierschutzbund describes the adverse effects of bottom fishing methods on the marine biodiversity and ecosystems and calls for the prohibition of these practices. The paper highlights the need for fishing techniques that are sustainable both for the mairne biodiversity and the environment. They conclude by underlying that European fisheries must take scientific advice seriously and prioritise the creation of a legal framework for marine protection.

Position paper | Sharkproject

The position paper submitted by Sharkproject advocates that there is increasing evidence that bottom fishing seriously damages deep corals and other fragile benthic habitats, while the recovery time is extremely long, if at all. They mention that bottom trawling carries major threats to bycatch and disturbances to the seafloor might have negative impacts on the carbon storage ability of the ocean. The position paper welcomes the maintenance of the Regulation but highlights its insufficient enforcement taking into account the low extent of observer coverage currently existing in the High Seas. According to the authors, the balance for the EU's fishing sector's economic goals and the potentially hugely negative impacts on fish populations, threatened species, and the marine environment needs to take the limited number of vessels into account. They also support that apart from the direct impacts to the seabed in VMEs, also the impact on associated marine species and habitats (e.g. reefs, seamounts, deep water corals, hydrothermal vents, sponge beds) should be taken into account. Furthermore, the position paper refers to the impact assessments on VMEs, which shall use parameters such as physical alteration to the seabed, sediment suspensions, as well as the welfare and survival rate of bottom-dwelling epifauna, or infauna species (e.g. benthic invertebrates) as a result of gear operations, as well as impacts on sensitive and vulnerable species recognized by the EU. They urge the European Commission to take a precautionary approach and an ecosystem approach to fishing in unregulated areas of the High Seas and in all identified or expected encounters with VMEs. The position paper also calls for appropriate scientific assessments of the fishing activities, and where no data are available the prohibition of these activities. Finally, suggested examples for improvements include the modification of gears to reduce bycatch, limiting the trawl duration and catch size, use of non-injurious materials, as well as the use of rewards to good actors in order to level the playing field.

Position paper | Producer Organisation for Freezer Vessels of Merchandise, Cephalopods and Miscellaneous Species (OPPC-3)

The position paper uploaded by OPPC-3 describes the work that has been undertaken by the Spanish fisheries administration, the Spanish Oceanography Institute and the fleet companies operating in the area toward the protection of the fisheries and marine ecosystems. They highlight that the embarkations of VMEs' observers have been introduced to complement the embarkations of specific scientific observers from the Spanish Oceanography Institute, while these observers receive prior training and relevant documentation from scientific teams focusing in particular on the identification of the different sensitive species or organisms. The authors suggest that, due to all the work and assessments that have been undertaken during the previous decades, in the case of the Spanish fleet, the Regulation only introduced small changes in the line of work, with the exception of increased administrative bureaucracy. They also refer to the (economic and managerial) impact of the measure relating to the embarkation of observers for the identification of VMEs, which, according to

them, does not bring any new added value and should be significantly reduced. The position paper claims that the state of VMEs in the high seas in the area in question has a high level of protection, since the areas have already been defined and mapped for more than a decade, and the fleets do not operate in closed areas. They also express their concerns about other threats such as future human activities in the area, such as mining and oil and gas operations, where the criteria for interaction with VMEs and the assessment of risks are quite different from those applied to commercial fishing. Furthermore, they consider that the Regulation is sufficient in relation to the Community fleet, but as a sector, and considering other fleets operating in the area, they believe that the EU should actively promote the establishment of an RFMO. The position paper suggests a reduction in bureaucracy and administrative burdens resulting from the application of the Regulation (i.e. reports should only be limited to the required period) as well as further collaboration between national fisheries institutes on scientific matters. Finally, the authors express their concerns regarding the disownment of the realities of businesses operating with bottom fishing vessels for the benefit of prohibition measures, which are not based on sound scientific grounds.

Position paper | GMVV Strategic Think Tank

The position paper uploaded by GMVV Strategic Think Tank refers to the unsustainability of modern fishing practices that result in catching enormous amounts of fish. They highlight that industrial exploitation of the oceans has led to overfishing in over 30 percent of all commercial fish stocks, while over 60 percent of the remaining stocks are on the verge of being overfished (as of July 2018) and that 96 percent of EU stocks in the Mediterranean are overfished. The position paper claims that the fishing industry is currently targeting species that constitute a significant segment of the natural food chain for sea mammals such as seals and whales. They conclude by underlying that the pace at which the ecosystem of our oceans is being destroyed is so rapid that to ensure our own survival, industrial fishing must be discontinued immediately.

Call for Evidence

In parallel with the public consultation, the Commission launched a Call for Evidence for which feedback from 22 participants was received. Of these, 10 answered as EU citizens, 5 respondents as members of NGOs, 4 on behalf of business associations, 2 respondents as members of consumer and environmental organisations, and another one did not specify. Geographically, most responses came from France (41%), Germany (27%), Italy (9%), and Sweden, Portugal, Ireland, Spain Czechia (5% each).

After reviewing the feedback, the main points can be summarised as follows:

- There is a need to maintain the Regulation, but implementation and enforcement need to be strengthened.
- Apart from the precautionary approach, the ecosystem-based approach should be more prominently featured.
- Research and science on VMEs should be further enhanced and alternative, more sustainable fishing methods should be utilised.
- Instead focusing on bans and limitations, stronger emphasis should be put on sustainable management and the use of alternative, more sustainable fishing methods. A call was made for modernising the gears and for reviewing the selectivity methods.
- There were converging views on the scope of application of the Regulation, with some respondents suggesting that is should not be amended (as proposed in the report to European Parliament in 2010), while others suggested to be extended to EU waters too.
- There was a call to incentivise responsible fishing practices to address concerns on the creation of an unlevel playing field.

- The issue of raising awareness on the significance and protection of VMEs was also addressed.
- Some respondents highlighted the need to completely ban bottom trawling.

As per usual practice, the call for evidence allowed the participants to submit additional information in the form of a document. 4 out of 22 respondents submitted such a document. The summary of each of these documents is as follows:

Position paper | CCI North

The position paper uploaded by CCI North makes an overview of the features of the VME Regulation and express their concerns that the North German fish processing industry would be seriously affected, should the EU extend the scope of application of the Regulation. The position paper also highlights that fishing practices have changed over recent years due to increased fuel prices and that some fishing seasons have been adapted (e.g. night-active species are caught at night). According to the authors, this already reduces the pressure on deep-sea ecosystems and to avoid any disproportionality through a possible new EU regulation, they call for a scientific analysis on how the alternative fishing methods might have a lesser impact on deep-sea ecosystems. The position paper also refers to the huge administrative costs on EU fishing businesses stemming from fishing authorisations, including detailed fishing plans (Article 4(1) of the Regulation). They claim that this, as well as any non-authorisations would lead to unacceptable discrimination between EU vehicles and third country vessels fishing in RFMO territories. There is also a risk that the stricter rules in the EU may also lead the remaining fishing vessels to be registered in third countries. Instead, the EU should continue to promote at international level the implementation of Resolution 61/105 and Resolution 64/72 for all vessels in the relevant RFMOs.

Position paper | Pro Wildlife

The position paper submitted by Pro Wildlife outlines some of the negative impacts of bottom-trawling on vulnerable marine ecosystems. The authors make some proposals on the way forward, namely, to strictly follow a precautionary and ecosystem-based approach for all fisheries, to ensure full implementation of Article 6 of the Regulation (i.e. ceasing of fishing operation in VME areas and in areas where no proper scientific assessment has been undertaken), to ensure that in areas, where the assessments did not identify VMEs, only bottom trawling with least possible impact should be permitted, to ensure that the requirement for a special permit and for a scientific assessment must not be abolished, to ensure further reduction of damages in any bottom trawling vessel under EU jurisdiction (e.g. by improving selectivity, decreasing injuries and mortality, limiting both duration of trawling and catch size), to expand financial support for scientific studies to identify and protect VMEs, and to consider the negative impact of other bottom fisheries in unregulated areas beyond national jurisdiction on VMEs. The position paper call for a transition to more selective, environmentally friendly and sustainable EU fisheries through a comprehensive change in EU subsidy policy.

Position paper | Sharkproject

See summary in page 52.

Position paper | CRPMEM

A map was submitted showing the industrial usage and the environmental protection zone in the English Channel.

Targeted consultations

The targeted consultations aimed at gathering information from stakeholders on more technical and specific issues to feed the evaluation. The interviews were structured on questions tailored to each stakeholder group (i.e. Member States, NGOs, scientific organisations, Advisory Councils, fishing industry) but all followed the five evaluation criteria and were shared in advance with the interviewee for better preparation. Detailed interview notes were taken for each interview. Some interviews were conducted through online tools, while some stakeholders preferred to submit their replies in written form. A total of 13 stakeholders were contacted, namely, Member States (5), fishing industry representatives (2), non-governmental organisations (4), scientific organisations (1), fisheries Advisory Councils (1). However, only seven contributions were received. The structure of the targeted consultations as well as the selected stakeholders were discussed and agreed beforehand with the ISG.

Summary of replies per evaluation criterion

Effectiveness

Many of the respondents considered that the Regulations has been somewhat successful in achieving its objectives. The influence of the Regulations and as well as the preceding UN resolutions have been positive in shaping regional and multilateral implementation of the relevant rules for the protection of vulnerable marine ecosystems, including the conduct of States within relevant organisations. The Regulation has also triggered the development of several scientific exercises and assessments, which resulted in the cartography of the area as well as of the impacts of fishing activities. It has also managed to regulate access to fisheries through the special fishing permits, the prohibition of bottom fishing in unassessed areas, the closure of areas etc. However, some respondents highlighted that despite progress the lack of data hinders a more comprehensive assessment and understanding of the full impact of the Regulation in achieving its objectives. Additionally, according to some interviewees, there are some factors that negatively affect the realisation of the Regulation's objectives. Namely, there is an unlevel playing field between EU and non-EU fleets fishing in the area, in which case the latter are not bound by the same rules and limits, while the limited available data makes it more difficult for a sound assessment of the status of the ecosystems in the area. Finally, some comments indicated that the existence of different and sometimes overlapping regulations create confusion in the implementation of the VME Regulation (e.g. SMEFF and DSAR Regulations).

Efficiency

While none of the stakeholders consulted were able to provide concrete feedback with regard to the relationship of costs and benefits of the implementation of the VME Regulation, there were some comments indicating that some costs are somewhat excessive. In particular, the costs related to the scientific research as well as the observer's coverage system pose difficulties in implementing the Regulation. It was also pinpointed that the Regulation creates additional administrative burdens and bureaucratic hurdles, which hinders the efficiency of some measures (e.g. the lack of personnel in conjunction with the frequency of the reporting obligation). Also, some stakeholders mentioned that the level of information that is being required by the Commission (regarding impact assessments, including for the authorisations under the SMEFF Regulation) is disproportionate to the level of information that is de facto available to MS when performing the impact assessment.

This notwithstanding, the many of the stakeholders interviewed believe that the benefits of the Regulation in protecting vulnerable marine ecosystems in the high seas justify the costs, in particular when the progress in protecting the ecosystems under question, the influence on the policies and legal frameworks of States and regional or international organisations, the creation of a new regulatory framework, and the raising of awareness the importance of VME conservation in fisheries management are taken into account.

Relevance

There was convergence among the interviewees that, in general terms, the Regulation still corresponds to the current objectives. However, there were several indications that the Regulation needs to be adapted to the most recent developments and get aligned with international standards and best practices. For example, it was highlighted that technological progress has been considerable since the adoption of the Regulation, both in terms of data management, use, and display, while the aggregation of information in relation to periodic mapping and evaluating VMEs should also be taken into account. Also, adjustments should be sought with regard to the move-on rule (Article 4) since scientific knowledge suggests some potential drawbacks and there are ongoing discussions, including in regional organisations, for possible alternative approaches. Readjustments on area closures or reconsidering the application of buffer zones, as well as modifying fishing gear were suggested by the stakeholders. Apart from the technological and scientific advancements, stakeholders referred to the current better understanding of the severity and climate-driven changes and to environmental threats other than fishing that should be taken into account when regulating the protection of vulnerable marine ecosystems. For instance, land waste, pollution, including from plastics, illegal fishing climate change impacts, global warming, ocean acidification, including the emissions generated from industries were pinpointed. Other human activities such as future deep seabed mining or oil and gas exploration should also be considered.

Coherence

The opinions regarding the coherence of the Regulation with the wider EU legal framework and international standards and obligations were mixed. A part of the stakeholders believes that the Regulation matches the international obligations as it mirrors the content of the relevant UNGA Resolutions, while it also aligns with the broader EU policy and legal framework, including emerging policies like the European Green Deal and biodiversity initiatives. In particular, it was highlighted that the VME Regulation has been a historical reference to drive VME conservation discussions and management beyond the scope of the Regulation and has influenced many other policies. This includes the VME related work undertaken in RFMOs like NEACF and the GFCM, as well as at EU level with several pieces of legislation which rely on or use provisions of the VME Regulation, such as the DSAR Regulation 2016/2336 (the 'Deep-Sea Access Regulation'), Regulation (EU) 2017/2403 on the Sustainable Management of External Fishing Fleets (SMEFF) and Regulation (EU) 2019/1241 (Technical Measures Regulation). For instance, the VME Regulation creates additional requirements specific to VME protection such as the assessment and issuance of a special fishing permit, which apply on top of the SMEFF authorisations. However, whether these authorisations meet the conditions of the issuance of special fishing permit under article 4 of the VME regulation needs to be further looked into.

Another part of the stakeholders consulted supports that there might be a certain degree of incoherence between the VME Regulation and other obligations either within the international setting or under the EU framework. First, some interviewees pinpointed that the implementation, surveillance and lack of control is inconsistent with international standards. The reporting of bycatch, and the monitoring of the activities of vessels (including position, and gear type) are necessary components that are missing. Also, there is no collection, and no synthesis of information needed to enforce control, while the impact

of the closed areas to vessels is unknown. Furthermore, some stakeholders expressed the view that the VME Regulation presents some overlaps with the SMEFF and DSAR Regulation, which creates confusion and legal uncertainty when it comes to implementation. According to these stakeholders, the EU framework for the external dimension of the CFP should provide for more straightforward provisions instead of having multiple regulations that may also interplay for the same area. For example, the SMEFF Regulation applies to high seas falling outside the scope of RFMOs for fishing vessels exceeding 24 metres in overall length. According with this legal instrument, a flag Member State may issue a fishing authorisation for fishing operations on the high seas if, along with other provisions, the envisaged activity is "in accordance with a scientific evaluation, demonstrating the sustainability of the planned fishing operations, provided or validated by a scientific institute in the flag Member State", or "part of a research programme, including a scheme for data collection, organised by a scientific body. The scientific protocol of the research shall be validated by a scientific institute in the flag Member State". As such, besides imposing an impact assessment identical to the one provided by Regulation 734/2008, it adds further conditions in terms of its validation. Another example regards the level of intervention of Member States and the Commission, which differs substantially under the different frameworks. In the case of the VME Regulation it is up to Member States to decide whether to approve or not, and then inform the Commission accordingly, while under the SMEFF Regulation the Commission may oppose to an authorization.

EU added value

The majority of the interviewees affirmed that the Regulation added value at EU level. They agreed that the intervention achieved results that it would be difficult to have been achieved at a different level of intervention and that the Regulation appears to strike a balance between conservation goals and fishing operations. According to them, the most prominent consequences of stopping applying the VME Regulation would be the jeopardization of the progress made as well as risking creating legal uncertainties in an area where no RFMOs exist. It would also probably negatively affect regional and global VME conservation developments as it would send a harmful policy message from the EU, which has one of the largest distant-water fishing fleets with perhaps the most progressive legal framework on VME protection. It could also slow down, and revert progress made in RFMOs when it comes to VME protection and negatively affect the implementation of related EU regulations like the SMEFF or the Deep-Sea Access Regulation. Most of the stakeholders agreed that the VME Regulation has played a central role in raising awareness about the conservation of marine ecosystems and the necessity for compliance has pushed the industry representatives to adapt their strategies and behaviours, leading to the integration of various legislative policies and measures.

However, a few respondents expressed opposing views mentioning that that the cessation of the Regulation would bring minimal differences. In specific, they stressed that fishing operations in the high seas are already covered by various instruments, including the SMEFF and DSAR Regulations, the UN Resolutions, and the FAO Guidelines for deep-sea fisheries in the High Seas. In the absence of this Regulation, the only measure that would be affected would be the embarkation of observers. However, the national measures of prior assessments and scientific advice that are in place and that are being followed for years are able to fill up this gap. Apart from that, according to them, the non-application of the Regulation would bring a significant improvement to the excessive bureaucracy that it has generated.

Recommendations

The stakeholders interviewed were also invited to provide suggestions and recommendations for further actions as well as in case it is decided to amend the Regulation. Their suggestions can be summarised as follows:

- The EU should take stronger action internationally and regionally to level the playing field between EU and non-EU fleets fishing in the high seas outside of RFMO/As to adopt similar standards on VME protection.
- The EU should take a more proactive role in compiling existing scientific information on the location of VMEs and bringing that information to the attention of relevant bodies and flag states to adopt precautionary measures to protect VMEs.
- The EU should provide financial/technical support for scientific research on VMEs.
- The EU should expand VME conservation rules to all EU fishing vessels operating in EU waters, which would create coherence between the CFP and the VME Regulation by introducing equivalent rules to prevent impacts of bottom fishing in shallower waters.
- The EU should continue to push for the establishment of RFMO's where there is none, including in the South-West Atlantic.
- The EU should focus more on the implementation and enforcement of existing regulations and clearing out the EU framework for the external dimension of the CFP, where potential overlaps between existing regulations.
- The EU should adjust the trawl gear to selective depths to reduce contact with the seafloor.
- The EU should consider identifying or establishing "*buffer areas*" to minimise the contact and impact on sensitive ecosystems.
- The provision for a 100% observer coverage onboard is not functional and should be amended.
- The Regulation should include key definitions (e.g. threshold levels or follow up actions once the move-on rule has been triggered, VME sampling protocols, VME taxa etc.).
- The Regulation adds to the bureaucracy and should be reduced.
- The frequency required for the submission of reports should be reduced or become more flexible.
- The need for periodic reviews to strike a balance between preserving ecosystems and conducting necessary research should be recognised.

Implementation review report

To further support the evaluation, the Commission compiled an implementation review of the Regulation, including the information received from Member States as response to the reporting obligation encoded in the Regulation. To support the finalisation of this report, the Commission invited Member States' authorities to reply to the below questions and inform the Commission accordingly:

Did the Member State authorise any vessels to fish using bottom gears in the high seas of FAO area 41 (South-West Atlantic) in 2008 - 2023?

A. If the answer is no, please inform the Commission accordingly, including for the period of 1 January to 30 June 2023.

B. If the answer is yes,

1) please communicate to the Commission any missing reporting information required under Article 12 (1) of Regulation (EC) No 734/2008 for the period 2008 – 2023 and inform the Commission of the contacts of relevant authorities with whom the details of the reporting information can be considered if necessary, and

2) please communicate to the Commission for the period of 1 January to 30 June 2023 a report according to the provisions of Article 12 (1) of the Regulation and any other relevant information pertaining to their implementation of the Regulation.

The Commission only received 12 replies from Member States, 10 of which indicated that they have not issued fishing authorisations falling under the scope of application of the Regulation. The remaining two provided additional information complementing the review report.

ANNEX VI. REFERENCES

1. Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC - Regulation - 1380/2013 - EN - EUR-Lex (europa.eu)
2. Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears - Regulation - 734/2008 - EN - EUR-Lex (europa.eu)
3. Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears {SEC(2007) 1315} {SEC(2007) 1317} - EUR-Lex - 52007PC0605 - EN - EUR-Lex (europa.eu)
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