

Legal report on the interpretation of Article 26 of Law 5/2023

The prevalence of environmental objectives

English translation of the Executive Summary

Executive Summary

The category of Marine Protected Areas (“**MPAs**”) in Spain encompasses different protection categories, including Marine Protected Areas in the strict sense (such as *El Cachucho*), and potentially a wide variety of other marine areas, such as Natura 2000 sites, OSPAR areas, and others with different designations covered by various international conventions (such as SPAMIs in the Mediterranean), along with others such as marine reserves. All these areas, which can be “integrated” in the Marine Protected Areas Network of Spain (“**RAMPE**”), are created with the aim of protecting marine biodiversity, and the State is responsible for managing them.

In practice however, the legal regime governing those marine areas lacks concrete definition, and in many cases protection is ineffective. This is particularly striking in the case of the Natura 2000 marine sites, despite they are generally covered by a well-defined legal regime and case-law at the EU level.

Article 26 of Law 5/2023 of 17 March, on sustainable fishing and fishing research (“LPSIP”) acquires particular relevance in the evolution and improvement of the protection regime of areas susceptible to integration in RAMPE, and in particular Natura 2000 marine sites. That article establishes the legal grounds to determine the limitations and prohibitions of fishing activities **in order to ensure that such activities are compatible with the conservation objectives of those areas, and that they do not undermine the achievement of such goals.**

Within the framework of the third United Nations Oceans Conference (“**UNOC3**”) held in Nice, the Spanish Government undertook to approve over 40 pending MPA management plans in the next 12 months, while also announcing the goal of reaching 25.7% of marine protected area by the end of 2025. Moreover, it highlighted its commitment to a roadmap with a view to complying with the 30% target by 2030.

This legal report highlights the essential function of the “**environmental objectives safeguard clause**” regarding those areas, as set forth in paragraph two of Article 26 of LPSIP, in accordance with the Habitats Directive¹, the Birds Directive² and the Framework Directive on Marine Strategy³, as well as the regulations established in the Common Fisheries Policy (“**CFP**”).

The report also draws attention **to the lack of practical application of Article 26 of LPSIP and the inherent difficulties thereof**. The huge voids in the current management plans of Natura 2000 marine sites is the most evident example of this lack of application, which in general, specifically excludes fishing from its scope of application. In this context, the problems of applying Article 26 of LPSIP that arose in the drafting process of Royal Decree

¹ Directive 92/43/EEC of the Council of 21st May 1992, on the conservation of natural habitats and of wild fauna and flora.

² Directive 2009/147/EC of the European Parliament and of the Council, of 30th November 2009 on the conservation of wild birds (Codified version).

³ Directive 2008/56/EC of the European Parliament and of the Council, of 17th June 2008, establishing a framework for community action in marine environmental policy.

531/2025 of 24 June are considered in particular, as they declare ten Special Areas of Conservation, their conservation measures are approved, and those of seven Special Protection Areas for birds, and a proposal is made to amend the geographical boundaries of twelve Natura 2000 sites in the Mediterranean Marine Region (hereinafter, "**RD 531/2025**"). In particular, the discrepancies that arose between the Ministry of Agriculture, Fisheries and Food ("**MAPA**") and the Ministry for Ecological Transition and Demographic Challenge ("**MITERD**") regarding the interpretation and application of Article 26 of LPSIP and the dysfunctions inherent to a decision-making mechanism based on the necessary cooperation between both Ministries within the framework of their respective competences are considered.

This report particularly highlights the special relevance that was acquired in the interpretation and application process of Article 26 of LPSIP, by the express legal provision that **limitations and prohibitions on fishing activity in outer waters in protected natural areas and marine Natura 2000 sites "shall be established ensuring that the achievement of the conservation objectives set for the Protected Natural Area or for the protected area of the Natura 2000 site in question is not undermined and shall be consistent with the conservation measures established for them in their management instruments"**.

The analysis that was conducted reveals the need for a new generation of management plans for Special Areas of Conservation ("**SACs**") and marine Special Protection Areas for Birds ("**SPAs**") in which, in line with the Habitats Directive, (i) conservation objectives are defined that must be "*site-specific, take into account their particular values and be precise*" and (ii) the necessary conservation measures are incorporated consisting, among others, of limitations and prohibitions on fishing activities, as also clarified by the European Commission⁴.

In this sense, the legal requirements of a procedural, formal and material nature governing the determination of the regime applicable to fishing activities in said places are identified, also highlighting the importance of applying the material safeguard clause with regards to the environmental objectives established in paragraph two of Article 26 of LPSIP.

Different **application phases of Article 26 of LPSIP** are also identified. In particular, those application phases consider how **integration of the necessary conservation measures has been planned, consisting of limitations or prohibitions on fishing activities, which must be implemented by Spain in application of Article 26 of LPSIP "for the purposes of fulfilling its obligations under paragraph 4 of Article 13 of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC; or Article 6 of Directive 92/43/EEC, provided that such measures are compatible with the goals established in Article 2 of this Regulation, that they achieve the objective of the relevant Union legislation they intend to apply, and are no less strict than the measures provided for in Union legislation", within the framework of CFP rules** (Article 11 and related provisions of Regulation (EU) No 1380/2013 on CFP rules).

⁴ See the European Commission's Guidance on Natura 2000 and fishing: Application of Article 6 of the Habitats Directive and Article 4 of the Birds Directive to marine fishing activities, published in October 2025.

This legal report is divided into six parts:

- 1) The first part describes the adoption process of Royal Decree 531/2025 and Opinion No. 168/2025 of the Council of State, characterized by its urgency as a consequence of having Spain failed to comply with the legal deadline of six years for the declaration of the aforementioned marine SACs and SPAs, and the approval of their management, as provided for in the Habitats Directive.
- 2) The second part includes an analysis of the regime governing common uses and activities for all the areas in Annex I (which is insufficient to guarantee compliance with the Habitats Directive and LPSIP in the marine SACs, entailing the lack of application of Article 4.4 of Regulation (EC) No. 1967/2006, in violation of Union Law) as well as the contents of the management plans in Annex II of Royal Decree 531/2025 (with an excessively generic definition of conservation objectives) in relation to the limitations established for professional fishing activities.

An approach to the different phases in the application of Article 26 of LPSIP is also discussed within this framework, highlighting the lack of integration of this provision in the drafting phase of the approved management plans and the optional nature of applying the provisions relating to zoning (paragraph 2 of Annex I) contemplated as a second phase of development of Royal Decree 531/2025 in which the application of Article 26 of LPSIP should also be newly integrated.

On the other hand, it is noted that in order to guarantee compliance with the Habitats Directive and LPSIP in marine SACs, the mere reference made under paragraph 1.1 of Annex I of Royal Decree 531/2025, as part of the common legal regime for uses and activities for all places, to "*the provisions established in current regulations on maritime fishing, approved by the competent administrative bodies within the scope of their respective competences*" is insufficient, since no specific provisions regarding the application of such to marine Natura 2000 sites is set forth in those rules (with the exception of an Article in Order APA/423/2020). Likewise, the restrictive interpretation of Article 4 of Regulation (EC) 1967/2006, which mirrors the provisions established in Article 18 of Order APA/423/2020, shows the lack of application of paragraph 4 of Article 4 of Regulation (EC) No 1967/2006 (which prohibits fishing with trawl nets, dredges, traps, purse seines, boat seines, shore seines or similar nets in any of the marine Natura 2000 areas) in violation of Union Law.

- 3) The third part refers to the discrepancies between MITERD and MAPA regarding the content of the seventh additional provision of Royal Decree 531/2025 concerning cases in which there is an overlap between the territorial scope of a SAC with a Marine Reserve of fishing interest or with a Protected Area of Fishing Interest. In that provision, MITERD establishes that a text that includes an implicit reference to Article 26 of LPSIP, expressly including the environmental objectives safeguard clause of the second paragraph, shall prevail. In its Opinion No. 168/2025, the Council of State remains neutral on this point, which has not been substantiated through an analysis of the applicable legal regulations it refers to.

In our opinion, the spatial scope of application of Article 26 of LPSIP includes the entirety of protected natural areas and marine Natura 2000 sites, also covering the area where there is an overlap with other protection categories, given that the rule does not differentiate them. It is an especially instrumental rule for implementing the necessary conservation measures consisting of limitations and prohibitions on fishing activity over the entire area of protected areas in compliance with the Habitats Directive and the Birds Directive. Furthermore, **application of the safeguard clause for the conservation goals of those areas, as described in the second paragraph of article 26 of LPSIP is, in any event, an essential condition for compliance with the said directives, and as Union Law, such shall prevail over others.**

- 4) The fourth part focuses on the shortcomings of the management plans and continuity with the practice of including excessively generic conservation objectives, given that, in accordance with CJEU jurisprudence, such objectives must be "*site-specific, take into account their particular values and be precise*"⁵. Consequently, and given the shortcomings already described in the uses and activities regime of paragraph 1.1 of Annex I in relation to fishing activities, it can be concluded that **in the 10 SACs declared under Royal Decree 531/2025 "*all necessary measures to establish conservation objectives and adequate conservation measures*" required for effective compliance with the Habitats Directive and the Birds Directive have not been implemented.**
- 5) The fifth part is devoted to the interpretation of Article 26 of LPSIP in relation to other provisions directly linked to this provision (first additional provision of Law 42/2007, of 13 December, on Natural Heritage and Biodiversity (hereinafter "**LPNB**") and former Article 18 of Law 3/2001, of 26 March, on maritime fishing). They all have the same purpose, *i.e.* that of the safeguarding or prevalence of environmental objectives, which finally were reinforced in the clearer terms in the second paragraph of the new Article 26 in LPSIP.

On the other hand, the procedural, formal and material legal requirements governing the determination of the regime of limitations or prohibitions on fishing activities in outer waters in marine Natura 2000 sites are determined. As previously mentioned, these requirements are applicable regardless of whether or not there is an overlap with other protection categories (including marine reserves of fishing interest or protection areas of fishing interest), given that the rule (Article 26 of LPSIP) does not distinguish, does not limit or exclude in any way its application in such cases.

In particular, **Article 26 of LPSIP provides for the prevalence of environmental objectives as an essential material condition, given that limitations or prohibitions on fishing activity in outer waters of Natura 2000 areas "shall be established ensuring that the achievement of conservation objectives established for the Protected Natural Area or for the protected space of the Natura 2000 site in question is not undermined and shall be consistent with the conservation measures established for those objectives in their management instruments".** This is a specific condition, its interpretation is clear and it is contained in a rule of

⁵ CJEU Judgment of 17 December 2020, *Commission v. Hellenic Republic*, C-849/19.

preferential application given its more special character and its instrumental character in application of the Habitats Directive and the Birds Directive.

6) The sixth and final part of this report is devoted to developing the analysis of the safeguard or prevalence clause of environmental objectives in the second paragraph of Article 26 of LPSIP. Literal interpretation, which is imposed by the clarity of the wording of the provision, is reinforced by systematic and purposeful interpretation, and is confirmed by national and CJEU jurisprudence.

Environmental prioritisation in the fishing sector in Spain stems from Article 45 of the Spanish Constitution, with the judgment by the Constitutional Court No. 99/2022 on fauna protection being particularly relevant, in which it is expressly stated that **ecological protection measures prevail over extraction activities such as hunting or fishing.**

In turn, the **safeguard clause for conservation objectives of marine Natura 2000 sites in the second paragraph of Article 26 of LSIP also acts as a guarantee of Spain's compliance with Union Law**; in particular, regarding the adoption of necessary conservation measures of this type (consisting of limitations and prohibitions on fishing activities) for the purposes of fulfilling its obligations under paragraph 4 of Article 13 of the Marine Strategy Framework Directive, Article 4 of the Birds Directive or Article 6 of the Habitats Directive⁶, as expressly provided for in Article 11, and other related provisions, of Regulation (EU) No 1380/2013 on CFP rules. The coherence of the CFP with Union environmental legislation was one of the main concerns and contributions of the CFP reform implemented under Regulation (EU) No 1380/2013, which specifically justified the incorporation of the rules and procedures of Article 11 and related provisions. Paragraph 1 of Article 11 of Regulation (EU) No 1380/2013 incorporates its own safeguard clause for environmental objectives, as the necessary conservation measures in marine Natura 2000 sites must comply with the general objectives of the CFP, establishing in all cases the express additional condition that they "*fulfil the relevant objective of the (environmental) legislation they intend to apply*".

As confirmed by the recent CJEU jurisprudence analysed below, economic interests and the socio-economic impact of the measures in question must be taken into account whenever integration thereof is possible, but ultimately, environmental objectives shall prevail (more specifically the conservation objectives of marine Natura 2000 sites) as the necessary conservation measures adopted by States for the purposes of fulfilling their obligations under Article 6 of the Habitats Directive and Article 4 of the Birds Directive "*fulfil the objective of the relevant Union legislation they intend to apply*" are imposed as an essential condition.

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⁶ See the European Commission's Guidance [Natura 2000 and fishing: Application of Article 6 of the Habitats Directive and Article 4 of the Birds Directive to marine fishing activities](#), published in October 2025.



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