

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

The prevalence of environmental objectives

Executive Summary	Error! Bookmark not defined.
Royal Decree 531/2025 and Opinion 168/2025 of the Council of State: General Considerations	7
Urgent processing of Royal Decree 531/2025 and breach of legal deadlines to declare the new SACs and approval of the management plans	7
Discrepancies between MITERD and MAPA	9
The legal regime covering the uses and activities and limitations of professional fishing activity.....	10
A common regime on the uses and activities for all declared SACs.....	10
The different application phases of Article 26 LPSIP and Royal Decree 531/2025.....	12
Discrepancies on the content of the seventh additional provision	15
Shortcomings in the management plans approved in Royal Decree 531/2025	17
Interpretation of Article 26 of LPSIP	19
Legal framework: Article 26 of LPSIP and other relevant applicable provisions	19
Legal requirements on the regime of limitations to fishing activities in marine Natura 2000 sites.....	21
Prevalence of environmental objectives in the interpretation and application of Article 26 of LPSIP	22
The “ <i>environmental objectives safeguard clause</i> ” of Article 26 of LPSIP, and Article 45 EC	23
Compliance with the Habitats Directive, the Birds Directive and the Marine Strategy Framework Directive and the CFP rules.....	24

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 531/2025 of 24 June are considered in particular, as they declare ten Special Areas of

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.

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).

This legal report is divided into six parts:

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.

- 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 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

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

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.

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.

Royal Decree 531/2025 and Opinion 168/2025 of the Council of State: General Considerations

The ultimate purpose of Royal Decree 531/2025, of 24 June, is "to review, order and update a number of Mediterranean Marine Natura 2000 protected sites"⁷. 10 new SACs are declared in the Mediterranean biogeographical region (Article 3)⁸, their corresponding management plans are approved and conservation measures are established, which are also applicable to seven SPAs. Modification to the geographical limits of 12 protected Natura 2000 sites in the Mediterranean Marine Region⁹ is also proposed.

It was initially a draft Ministerial Order that was converted into a Royal Decree. From the wording of Opinion No. 168/2025 of the Council of State, it can be construed that there were several different versions of the draft, and the impact analysis report regarding it, although access to them was not possible.

To prepare this report, the text of the draft Ministerial Order released for public information and allegations in September 2020 and the final text of Royal Decree 531/2025 published in the Official State Journal were available, as well as the information indirectly provided in Opinion No. 168/2025 of the Council of State regarding changes made to the text during the drafting process.

Fast track processing of Royal Decree 531/2025 and breach of legal deadlines to declare the new SACs and approval of the management plans

Among the most relevant aspects of the processing of Royal Decree 531/2025 is the **urgency resulting from Spain's failure to declare the SACs and approve the management plans for those sites**.

The regulatory impact analysis report itself considers the adoption of this Royal Decree a necessary measure for compliance with said obligation: "As a result of obligations arising from the European Union Law framework and national regulations [...], Spain must declare as SACs the SCIs approved by the European Commission and approve their conservation

⁷ Preamble to Royal Decree 531/2025, of 24 June.

⁸ The Royal Decree declares as SACs the following sites: ES0000447 "Espacio marino de Oropesa y Benicàssim"; ESZZ16010 "Espacio marino del entorno de Illes Columbretes"; ESZZ16004 "Espacio marino de Illes Columbretes"; ES5222007 "Alguers de Borriana-Nules-Moncofa"; ES5212005 "L'Almadrava"; ESZZ16007 "Espacio marino de la Marina Alta"; ESZZ16006 "Espacio marino de Ifac"; ESZZ16008 "Espacio marino Cabo de les Hores"; ES0000214 "Espacio marino de Tabarca"; ESZZ16009 "Espacio marino de Cabo Roig".

Through the [Agreement of 25 April 2014, of the Council, adapting protected areas of marine Natura 2000 Sites and maritime-terrestrial sites, assigning authorities over the marine environment established in Law 42/2007 of 13 December on Natural Heritage and Biodiversity](#), which are assigned to the General Administration of the State regarding the declaration and management of several protected sites in the Natura 2000 network, fully located in marine waters.

⁹ [The Government approves declaration of 10 new Special Areas of Conservation \(SAC\) in the Natura 2000 Network](#)

measures and those of SPAs. Consequently, the alternative, or choice, not to regulate the issue comprising the subject matter of this draft Royal Decree is not considered viable¹⁰.

In application of Article 4.4 of the Habitats Directive¹¹, Article 43.3 of LPNB (Natural Heritage and Biodiversity Law) establishes that, once the list of SCIs has been approved by the European Commission, those sites must be declared as SACs as soon as possible and, at the latest, within a period of six years, including approval of the relevant management plans or instruments¹². **Fulfilment of that deadline took place in 2012 for the sites considered in Royal Decree 531/2025¹³, except in the case of “Columbretes Islands Marine Site” which took place in 2021¹⁴.**

In 2020 the European Commission had already addressed a letter of formal notice to Spain regarding the delay in declaring those sites as SACs, and approval of the relevant management plans. **In 2023 the Commission issued a notice for breach of Union Law¹⁵.** Consequently, urgent consultation was held by the Council of State, which is expressly mentioned in its Opinion¹⁶:

“The order from Your Excellency cited in the heading states that “Approval of this rule is urgent, as it declares special conservation sites and approves management plans for some of the sites of Community Importance in the Mediterranean biogeographical region referred to by the European Commission in the letter of formal notice C (2020)1350, of 2 July 2020, complementary to the letter of formal notice of 27 February, 2015. Subsequently, on 28 September 2023, the Commission sent a letter notifying infringement INFR (2023) 2037, due to the insufficient nature of the list of proposed Sites of Community Importance, in accordance with the provisions of Council Directive 92/43/EEC, of 21 May 1992, on the conservation of natural habitats and wild fauna and flora”. Therefore, consultation is urgently formulated ”¹⁷.

It should be added that in the letter of formal notice of 2 July 2020, the Commission also informed of non-compliance with the obligation to establish the necessary conservation measures, linking such to the generalised and persistent practice in Spain of not setting sufficiently detailed and specific conservation objectives for each site in its management plans, and consequently it cannot be considered that the conservation measures established for the sites in question meet the ecological requirements of the habitats and species that dwell in them.

As will be seen, Royal Decree 531/2025, of 24 June, establishes a common uses and activities regime for the 10 considered SACs (Annex I) in which the necessary conservation measures relating to fishing activities were not included. Such measures

¹⁰ Page 3 of Opinion 168/2025 of the Council of State.

¹¹ [Directive 92/43/EEC of the Council of 21 May 1992, on the conservation of natural habitats and of wild fauna and flora](#), OJ L 206 of 22.7.1992, pages 7–50.

¹² [Law 42/2007, of 13 December, on Natural Heritage and Biodiversity](#) (Official State Journal 299 of 14 December 2007).

¹³ Approval of those sites as SCIs took place by means of the [Commission Decision of 19 July 2006, adopting the list of sites of community importance in accordance with Directive 92/43/EEC on the Mediterranean Bio-geographical Region](#) (Official Journal of the EU 259, of 21 September 2006).

¹⁴ [Commission Implementing Decision \(EU\) of 26 November 2015, adopting the ninth updated list of sites of Community Importance of the Mediterranean Bio-geographical Region](#) (Official Journal of the EU 338, of 23 December 2015).

¹⁵ Breach procedures package of September 2023 regarding Spain: main decisions: [INFR \(2023\)2037](#).

¹⁶ Page 1 of Opinion 168/2025 of the Council of State.

¹⁷ *Ibid.*, p. 7.

are also missing from the management plans for each SAC (Annex II). Furthermore, there is still an evident lack of detail and specifics regarding the definition of conservation objectives for each SAC in the management plans.

Discrepancies between MITERD and MAPA

Essentially, the discrepancies between MITERD and MAPA were embodied in the common legal regime on uses and activities, particularly the prohibitions and limitations on professional fishing activities described in Annex I and, in particular, in the wording of the seventh additional provision of Royal Decree 531/2025.

On reading the Opinion of the Council of State, there is evidence of **several MAPA reports being issued throughout the procedure**, in which observations are made, fundamentally relating to the regulation of fishing activities and defending the prevalence of the legal regime of marine reserves in the event of any overlap with other protected zone categories¹⁸.

The first time, among other items, the Council of State returned the file requesting approval by MAPA to apply for an opinion that was issued on 11 December 2023 "*conditioned to modifying the seventh additional provision to adequately safeguard state fishing authority*"¹⁹. The second time, this consultative body returned the file requesting MAPA's approval for consultation "*given that the observation that the relevant department had conditioned it to had not been included in the project*"²⁰.

In the documentation included in the file sent to the Council of State after it was returned for the second time, **the discrepancy between MAPA and MITERD regarding the content of the seventh additional provision was clarified**.

On the one hand, MAPA approved the request for an opinion in a document dated 26 November 2024 "*despite this Department maintaining its dissonance in relation to the wording of the seventh additional provision of the project, as previously stated on several occasions to that Ministry*". Various proposals on the wording of that precept are included, and, "*In case none of the previous wordings are approved by the Department, deleting the seventh additional provision is proposed and a final provision be added instead that modifies the affected reserve order, so that the fishing rules that are required to be included in this Royal Decree are expressly contained in the reserve order with a new article stating which fishing rules will be applied in the parts of the reserve that are declared SAC - SPA. In this case, the title of authority would have to be amended in order to issue that new final provision exclusively based on Article 149.1.19^a of the Spanish Constitution, and safeguard its rank of order*".

On the other hand, in the report by the General Directorate for Biodiversity, Forests and Desertification pertaining to MITERD, of 7 February 2024, it was pointed out that "*the proposed text of the seventh additional provision [...] of the project received from the Ministry of Agriculture, Fishing and Food on 11 December, [...], undermines the authority of the Ministry for Ecologic Transition and Demographic Challenge regarding the definition of the*

¹⁸ Page 5 of Opinion 168/2025 of the Council of State.

¹⁹ Page 6 of Opinion 168/2025 of the Council of State.

²⁰ *Ibid.*

fishing regulation measures to comply with the conservation objectives in marine protected sites falling under its authority”. Likewise, a new wording of the aforementioned additional provision is proposed²¹.

As deduced from the analysis conducted in this report, the legal position that MITERD defends is correct, in line with the content of the relevant legal provisions on this matter.

The legal regime covering the uses, activities and limitations of professional fishing activity

As provided for in Article 4.2 of Royal Decree 531/2025, [*“the uses and activities carried out in SAC and SPA sites shall be in line with the general regulations established in Annex I and the conservation measures established in the management plans of Annex II”*].

Those provisions comprise the applicable prevention regime until the new geographical boundaries of the SAC are approved by the European Commission (Article 6.1 of Royal Decree 531/2025).

A common regime on the uses and activities for all declared SACs

As mentioned in the Opinion of the Council of State, the regulatory impact analysis report led to the inclusion of a **common legal regime on the uses and activities for all 10 declared SACs in Royal Decree 531/2025**:

“The regulatory impact analysis report points out that “During the drafting process of the Royal Decree and the management plans, the alternative to include regulation on the uses and activities in the management plans for each specific site was ruled out, owing to the fact that many regulations concerning all the sites as a whole coincided, and including the said regulations in a single document was more accessible for the managed site. Therefore, the “General Regulations on Uses and Activities stemming from the management plans” were included in Annex I to the Royal Decree”.

According to the recitals, “Regarding the content of the Annexes, it must be stated that Annex I establishes the general regulations on the uses and activities stemming from the management plans, which will be applicable to the aforementioned sites. The aforementioned management plans, specific for each SAC or SAC/SPA, as defined in Annex II, include characterisation of the physical, ecological and socio-economic environment, an analysis on the conservation condition of the conservation values and the main pressures and threats affecting them, and also a number of conservation objectives and measures”.

This legal political option could contradict the obligation of establishing specific conservation measures for each site, which requires their ecological characteristics be taken into

²¹ Page 7 of Opinion 168/2025 of the Council of State.

account²². In this case, this would entail the general obligation of implementing **the strictest** legal regime on uses and activities required for each of the sites, since otherwise, the protection required under the Habitats Directive and the LPNB would be laxer for some of them²³.

Having regard to the general regulation on uses and activities defined in the Royal Decree, **the general rule simply consists of a referral to application of “the provisions of current rules on maritime fishing approved by the competent administration bodies within the scope of their respective authorities”**. The literal wording of Section 1.1 of Annex I of Royal Decree 531/2025 is as follows:

“1. General regulation of uses

1.1. Professional fishing activity

Having regard to professional fishing activity, without prejudice to the other considerations established in this section and in the management plans defined in Annex II, the provisions of current regulations on maritime fishing in general shall apply, as approved by the competent administration bodies within the scope of their respective authorities, in particular in cases when part or all of the protected site falls within a “Marine Reserve of Interest for Fishing” or a “Protected Area of Interest for Fishing”. In this respect, within the territorial scope of the Tabarca Marine Site and the Columbretes Islands Marine Area, there is an overlap between the marine reserve and interest for fishing, and all areas, with the exception of the Oropesa and Benicassim Marine Area, partially overlap with protected areas of interest for fishing”.

The referral made in this clause to the fishing rules is insufficient to guarantee fulfilment of the Habitats Directive and LPSIP in these marine SACs, since:

- The CFP rules do not consider specific limitations or restrictions applicable to fishing in the marine Natura 2000 sites (with the exception of Article 4.4 of Regulation (EC) 1967/2006), but rather a number of legal provisions and rules that are eminently procedural, so that, along with the measures that can be adopted by the Commission, member States can adopt the necessary management and conservation measures for the purpose of complying with the Habitats Directive, the Birds Directive and the Marine Strategy Framework Directive²⁴.
- Spanish fishing regulations do not establish specific limitations or restrictions applicable to fishing in the marine Natura 2000 sites (with the exception of Article 18 of [Order APA/423/2020, of 18 May, establishing a management plan for conservation of demersal](#)

²² This conflict, or contradiction, can be observed in the wording of the first paragraph of Annex I: “*This Annex specifically includes regulatory and administrative measures on the uses and activities that will be applied in the Special Areas of Conservation (SACs) and the Special Protection Areas of Wild Birds (SPAs) in order to establish regulations that enable achieving the conservation objectives defined in each management plan, without prejudice to the specific sector rules*”.

²³ See, European Commission [Natura 2000 and fishing: Application of Article 6 of the Habitats Directive and Article 4 of the Birds Directive to marine fishing activities](#), page 18, where it mentions that “*the broadest suitability of such measures must be assessed in accordance with the conservation objectives for each specific site, and the local impacts of fishing activities, and where necessary, such measures must be complemented with additional measures*”.

²⁴ See also the European Commission's Guide [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, pages 41 and following.

[fishing resources in the Mediterranean Sea](#), which somewhat **deficiently** incorporates Article 4 of Regulation (EC) 1967/2006, and consequently, entails a breach of Union Law²⁵.

In these conditions, **Article 26 of LPSIP works as a specific rule to determine the regime of fishing limitations and prohibitions in the outer waters of protected natural sites and marine Natura 2000 sites, based on the principle of institutional cooperation between MITERD and MAPA. Nevertheless, the dysfunction in practical application of this provision is more than evident** in the adoption process of Royal Decree 531/2025, and in more general terms, in failing to apply it from the moment LPSIP came into force.

The different application phases of Article 26 of LPSIP and Royal Decree 531/2025

In view of the foregoing, **application of Article 26 of LPSIP and the measures considered therein (regime of fishing activity limitations in marine Natura 2000 sites) should be integrated, in particular in the drafting process of the rules used to declare marine SACs, in the establishing of the preventive regime and in the approval of the management plans.**

This has not been done to date, and consequently, these protected marine sites are not covered by the necessary conservation measures regarding fishing activities, with the exception of certain MPAs, such as El Cachucho. With respect to the others, the regulation considered in the management plans of the approved SACs before the current LPSIP came into force, and therefore, adoption of Article 26, fishing activities are specifically excluded in general. In this context, Royal Decree 531/2025 is particularly relevant as it is the first rule of this nature adopted after Article 26 of LPSIP came into force. Therefore, it is the first case where application of Article 26 of LPSIP integrated in a rule drafting process to

²⁵ Having regard to the **restrictive interpretation and application of Article 4 of Regulation (EC) 1967/2006, attention is brought to the fact that the second paragraph of Section 1.1 of Annex I of Royal Decree 531/2025 contains the same deficiencies as those identified in Article 18 of Order APA/423/2020**, since it establishes that *“in cooperation with the competent administration bodies for fishing (regional and national), application of Regulation (EC) 1967/2006 of the Council of 21 December 2006 concerning management methods for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94, prohibiting fishing with towed gear, dredges, pot lines or purse seines whenever such are in contact with the seabed where there is Posidonia oceanica or other marine phanerogams and coralligenous and maerl seabed. Likewise, having regard to fishing with towed gear, Article 13 of the aforementioned regulation prohibits the use thereof at depths of less than 50 metres”*.

Article 4.2 of the aforementioned Regulation applies to Natura 2000 sites, and to any other area of the sea not covered by the said legal statutes, with fishing using mobile bottom gear on posidonia oceanica, coralligenous and maerl beds. **Nevertheless, the provisions of Article 4.4 are not fulfilled, which prohibits fishing with trawl nets, dredges, traps, purse seines, boat seines, shore seines or similar nets in any of the marine Natura 2000 sites.**

The legal arguments put forward to support this interpretation lie in the lawsuit filed by the ClientEarth delegation in Spain and Oceana against the Resolution of 10 September 2024 by the Secretariat General for Fisheries, resolving the request for additional fishing days for the bottom trawler fleet in the Mediterranean in 2024 as a result of application of voluntary measures, published in the Resolution of 2 July 2024 by the Secretariat General for Fisheries, establishing the final quota of fishing days for the bottom trawler fleet in the Mediterranean in 2024. In respect thereof, referring the matter for a preliminary ruling before the CJEU is advocated regarding interpretation of Article 4 of Regulation (EC) 1967/2006.

declare new marine SACs is raised, establishing the prevention regime and approving the relevant management plans. In practice **however, integration of Article 26 in the drafting process of Royal Decree 531/2025 was very limited owing to the lack of agreement between MITERD and MAPA.**

Likewise, the third additional provision of Royal Decree 531/2025 considers the **provisions on zoning**, which can be adopted within a deadline of two years. This is the second development phase of this Royal Decree, in which application of Article 26 of LPSIP²⁶ would have to be newly integrated, as expressly provided for in the third final provision of Section 2 of Annex I of this Royal Decree.

Indeed, introducing provisions on zoning is simply optional, and therefore implementing the necessary conservation measures through restricting fishing activities is not guaranteed either in the second development phase of Royal Decree 531/2025:

“Section 2. Zoning Regulations

1. *Within the maximum deadline of two years from the date of approval of this Royal Decree, in order to improve the ability to apply the proposed general measures and the specific management measures defined in Annex II, zoning in accordance with the terms established in Annex I can be established for any areas where such is considered pertinent. The said zoning will be approved by means of an Order by the Minister for Ecologic Transition and Demographic Challenge.*
2. *In the event of zoning provided for in Section 1 establishing fishing limitations or prohibitions regarding the merchant navy, ports of general interest and maritime signalling, in accordance with the first additional provision of Law 42/2007 of 13 December, on proposal by the Ministry for Ecologic Transition and Demographic Challenge and the department with authority over the subject matter, such shall be approved by the Government [...].*

Another phase of application of Article 26, of particular practical importance, given the insufficient regulation of fishing activities in rules such as Royal Decree 531/2025 (and the generalised exclusion of fishing activities from the regulation considered in the marine SAC management plans prior to implementation of LPSIP in 2023), is the **application of Article 6.3 of the Habitats Directive and Article 46.4 of LPNB in relation to fishing activities**; i.e. within the framework of the former and suitable assessment by the competent bodies of MITERD regarding professional fishing activities that should be authorised in view of sector legislation (in this case the fishing rules) by the competent authority (MAPA)²⁷.

As expressly stated in the aforementioned provisions, “*the competent national authorities shall only declare them as such in accordance with the said plan or project after having ensured that no damage to the integrity of the site will occur, and where relevant, after referring it to public information*”. In this case, application of Article 26 of LPSIP would, in turn, be integrated into the granted authorisation process in view of fishing rules, and in such case being able to verify the prohibitions or limitations of professional fishing activities in

²⁶ Referral specifically made to the first additional provision of Law 42/2007 must now be understood as referring to Article 26 of LPSIP.

²⁷ Regarding the unavoidable application of Article 6.3 of the Habitats Directive to fishing activity, see also the guide by the European Commission *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, pages 27 and following.

resolutions that are granted on an annual basis through the relevant authorisations for different fishing gear and fisheries in the national sub-fishing grounds, within the framework of the CFP. Royal Decree 531/2024 provides a generic regulation in its articles on matters regarding the assessment of plans, programmes and projects (Article 7 and 8), emphasising in this respect the specific reference to a broad notion of plans, programmes and projects, consistent with the subject matter in CJEU case law in Annex I:

“Likewise, in relation to processing of plans, programmes, projects or other human activities that could take place in the areas covered by this Royal Decree and their surroundings, the provisions of Article 46 of Law 42/2007 of 13 December shall apply, as shall Articles 6 and 7 of Law 21/2013 of 9 December on environmental assessment.

Based on the said rules, the need to evaluate the effect of plans, programmes and projects that are intended to be carried out in protected marine sites is established, applying a broad definition thereof, which does not limit the scope of a plan or a project to specific categories, but rather considering assessment as a key factor if, in the said plans, programmes, projects or human activities can have a notable effect on Natura 2000 Sites in accordance with the different guides provided in Article 6 of the Habitats Directive published by the European Commission.

In application of those regulations, the Ministry for Ecologic Transition and Demographic Challenge shall promote cooperation between the affected Public Administration Departments in order to guarantee compliance with the SAC/SPA conservation objectives, in accordance with the provisions established in this Royal Decree”²⁸.

The possibilities of applying Article 26 are not exhausted in the aforementioned phases. In particular, the cases where EU members States have adopted the necessary conservation measures in their Exclusive Economic Zone (EEZ) require a specific mention, in this case Spain, when the interests of other member States are affected who have a direct interest in the management of the fisheries in question. In these cases, application of Article 26 would necessarily be linked to the procedures for adopting decisions covered within the framework of the CFP; in particular Articles 11 and 20 of Regulation (EU) 1380/2013 on CFP rules. Spain has not made use of those procedures with the exception of its participation in the recommendation submitted on 20 June 2024 by the regional group of south-western waters (Belgium, Spain, France, Netherlands and Portugal) proposing specific measures to the European Commission to reduce by-catches of small cetaceans in the Bay of Biscay (subarea 8 of the ICES). This only took place following the start of infringement procedures by the European Commission and significant dicta by the Council of State of France with the French government imposing the obligation to adopt the necessary conservation measures consisting of spatial and temporal limitations for certain fishing gear in the Bay of Biscay caused by the stranding of cetaceans in that area²⁹.

²⁸ In particular, the CJEU has repeatedly adopted a broad concept of project applicable to fishing activities (CJEU Judgment of 7 September 2004, on the Wadden Sea (or Waddenzee) C-127/02, ECLI:EU:C:2004:482, regarding mechanical harvesting of cockles).

²⁹ See section 6.2 of this report.

Discrepancies on the content of the seventh additional provision

As can be seen, in the first paragraph of Annex I of Royal Decree 531/2025 a provision provides that in the **territorial scope of SACs where there is an overlap with Marine Reserves of Interest for Fishing or a Protected Site of Interest for Fishing**, “*professional fishing activity, without prejudice to the other considerations established in this section and the management plans in Annex II, the terms of the provisions established in current rules on maritime fishing shall apply in general, as approved by the competent administration bodies within the scope of their respective authority*”. In this respect, it points out that, within the territorial scope of the Tabarca Marine Site and the Columbretes Islands Marine Site, there is an overlap with marine reserves of interest for fishing, and all areas, with the exception of the Oropesa and Benicassim Marine Site partially overlap with protected areas of interest for fishing”.

The main discrepancies between MITERD and MAPA mentioned in the Opinion of the Council of State refer to the wording of the seventh additional provision of Royal Decree 531/2025, which is more specific on this matter in the following terms:

“Seventh additional provision. Convergence with other protection categories.

When the territorial scope of a marine protected site converges with a Marine Reserve of Interest for Fishing or a Protected Site of Interest for Fishing in outer waters, the limitations and prohibitions applicable to fishing and fishing resources, including the conditions thereof, envisaged in the rules regulating the uses and activities within the scope of the reserve or site of interest for fishing, shall be determined on joint proposal by the Ministry of Agriculture, Fishing and Food and the Ministry for Ecologic Transition and Demographic Challenge according to their respective scopes of authority, ensuring that fulfilment of the conservation objectives established for the protected marine sites are not undermined and that they are coherent with the conservation measures established for them in the management instruments”.

These provisions are inspired by the generic wording of Article 27.2 of LPNB³⁰, but the determining factor is that the seventh additional provision implicitly refers to the decision-making mechanism considered in Article 26 of LPSIP, **literally reproducing the environmental objectives safeguard clause** of paragraph two of the said provision. It stems therefrom that the questions arising in this report (prevalence of environmental objectives over social and economic impact considerations in the fishing sector in the definition of the limitations regime applicable to fishing activities in those SACs) will, in practice, be determining in the effective application that is to be done in the future of the said provision. Moreover, in all areas located within the Mediterranean sub-fishing ground, application of Article 4 of Regulation (EC) 1967/2006 is unavoidably applicable, especially of paragraph 4.

³⁰ “2. If different categories of protected areas overlap in the same place, the rules regulating them, and the planning mechanisms must be coordinated and merged in a single integrated document in order to ensure that the different applicable regimes according to each category comprise a coherent whole. As an exception to the above are any cases when the different categories of protected areas fall under the scope of competence of different Public Administration bodies, without prejudice to the relevant inter-administration cooperation”.

The position of **neutrality** in **Opinion 168/2025 of the Council of State** regarding this matter is somewhat surprising. The most relevant dictum by that body, insofar as this report is concerned, is in Section IV.E) of the Opinion, as follows:

"E) Approval by the Ministry of Agriculture, Fishing and Food and the Ministry of Transport and Sustainable Mobility to request the opinion of the Council of State was correctly granted. The difference of view between the former of those departments and the Ministry for Ecologic Transition and Demographic Challenge is not a barrier regarding application for the opinion by order of Your Excellency.

The disagreement affects the seventh additional provision of the project which establishes the applicable preferences to the project over rules on fishing. Both this option, and the contrary option, as defended by the Ministry of Agriculture, Fishing and Food, are compatible with current legality, and the case files do not provide any grounds that could be applied to settle the matter, as this Council could do in the use of its consultative capacity. Therefore, it is believed that this General Commission of Secretaries and Sub-secretaries of State should resolve this difference.

In any event, bear in mind that the arising question of applicable priority regarding the seventh additional provision of the project does not only reside in the provision itself: it also appears in the first paragraph of Item 1.1 of Annex I. The project therefore needs to be reviewed in order to avoid discrepancies in the finally approved solution".

The statements made by that consultative body without being minimally based on the applicable legal rules they refer to are rather surprising.

As will be discussed in a later section, the European and national environmental and fishing rules specifically and coherently establish **environmental objectives safeguard clauses** for when the necessary conservation measures are adopted for the purposes of complying with the Habitats Directive (in particular, Article 6) and the Birds Directive (Article 4) consisting of limitations or prohibitions of fishing activities in marine Natura 2000 sites.

Marine Natura 2000 sites are included within the spatial scope of application of those rules. In particular, the spatial scope of application of article 26 of LPSIP includes the entirety of protected natural sites and marine Natura 2000 sites, also covering the areas where there are overlaps with other protection categories, given that **the rule does not differentiate between them: It is an especially instrumental standard for implementing the necessary conservation measures consisting of limitations and prohibitions on fishing activity over the entire area of protected sites in compliance with the Habitats Directive and the Birds Directive.**

Furthermore, **application of the safeguard clause for the conservation objectives of those sites, 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**³¹.

³¹ See sections 5 and 6 of this report.

Shortcomings in the management plans approved in Royal Decree 531/2025

Attention must be brought to the excessive generalisation of the analysed management plans.

This Royal Decree implies continuity of the practice of adopting management plans for marine Natura 2000 sites in which specific conservation objectives for all the species and the habitats of Community Interest with significant presence in the site are not adopted, and, when they are adopted, they are fairly unspecific, generic and non-measurable.

The CJEU and the European Commission have repeatedly stated that setting specific conservation objectives for all the Natura 2000 sites is essential, and that such be made public. As pointed out by the European Commission³²

"The Habitats Directive specifically refers to the "conservation objectives of the said sites" as the basis for applying paragraph 3 of Article 6. In the judgment regarding matter C-849/19, Commission/Greece, the CJEU confirmed that conservation objectives must be formally established and must be site-specific, take their particular values into account and must be precise³³.

Moreover, on repeated occasions the Court has upheld the scope of the obligation to conduct an adequate assessment of the effects of a plan or project concerning a protected site to be determined in view of the conservation objectives³⁴. In other words, the decision of whether or not a plan or project can notably affect a Natura 2000 site must be taken while considering the conservation objectives of the site in question (see Section 3.1 "Prior Assessment"). Hence, setting site-specific conservation objectives for all the Natura 2000 sites is essential, and that such are made public without delay.

As explained later on in Section 3.2.2, site-specific conservation objectives must be established regarding all protected habitats and species that are significantly present in the site (i.e. habitats and species assigned category A, B or C, but not D, in the standard data form on the site in the assessment). The conservation objectives must specify the goals to be reached regarding each of the attributes or parameters that determine the conservation status of the protected elements".

In turn, this underscores the insufficiency of the conservation measures, that are not defined for all species and habitats of Community interest. The ones that are included are mostly generic statements, unspecified with no schedule or programme, or budget.

These shortcomings are identified in the general nature of the management plans for the marine Natura 2000 sites, which fail to meet the requirements established in the Habitats Directive and the Birds Directive.

Continuing along those lines of shortcomings, **in the case of the 10 SACs that were declared in Royal Decree 531/2025, not "all the necessary measures to establish adequate conservation objectives and conservation measures" have been adopted, as required for effective compliance with the Habitats Directive in accordance with**

³² [Commission Notice. Assessment of plans and projects in relation to Natura 2000 sites: methodological guidance on the provisions of Article 6, Sections 3 and 4 of the Habitats Directive 92/43/EEC](#), p. 6.

³³ Sections 58 and 59.

³⁴ Section 51.

CJEU case law³⁵, more so in relation to the impacts caused by fishing activity regarding deterioration threats.

Illustrative in this regard, concerning the definition and the spatial scope of application of the necessary conservation measures relating to fishing activities, is the criterion indicated by the Commission, in particular in the case of fishing activities:

“Conservation measures are the actual mechanisms and actions to be put in place for a Natura 2000 site with the aim of achieving the site’s conservation objectives. The obligation is to establish the necessary measures, irrespective of whether those measures are applied within individual sites, or even in some cases outside the boundaries of sites or across multiple sites. It may be that a significant component of a Member State’s compliance with Article 6.1 is through measures which are not site specific. This may be particularly relevant to marine sites where, for example, wider regulation of fisheries activities may be a significant element of Article 6.1 compliance. According to Art. 6.1, conservation measures in SACs must correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the site. Conservation measures are generally established at the local/site level, but they can also be designed at the regional or national level, or even agreed at the cross-border, biogeographical or EU level. They may include areas that are not part of the Natura 2000 network (horizontal measures or measures for national ecological networks, connectivity, etc.)³⁶.

Consequently, it could be convenient or necessary to establish limitations or prohibitions on fishery activities, even beyond the boundaries of a SAC or SPA. The suitability of such broader measures must be assessed in accordance with the site-specific conservation objectives, and the local impacts of fishing activities, and may be complemented by additional measures where necessary.

Compliance with Article 6.1 could thus be achieved, as also stated by the European Commission in the recent Natura 2000 and fishing guide³⁷, by establishing limitations or prohibitions on fishing activities for several Natura 2000 sites. Hence, for example, through a general prohibition of bottom trawling in the marine Natura 2000 network (similar to the provisions established in Article 4.4 of Regulation (EC) 1967/2006 in the Mediterranean for Natura 2000 seascapes that have been designated for conservation of sensitive habitats considered in that provision).

In Spain, for example, prohibiting bottom trawling based on this general approach could be established for the areas included in RAMPE (Marine Protected Areas Network of Spain), leading to all necessary items to progress further into effective integration of the marine Natura 2000 sites in the network.

³⁵ CJEU judgment of 17 December 2020, *Commission v Hellenic Republic*, C-849/19.

³⁶ Commission Note on Setting Conservation Objectives for Natura 2000 Sites Final Version 23/11/2012. See also the European Commission’s Guide *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, page 18.

³⁷ European Commission, *Natura 2000 and fishing: Application of Article 6 of the Habitats Directive and Article 4 of the Birds Directive to marine fishing activities*, October 2025, p. 18.

Interpretation of Article 26 of LPSIP

The preamble to Royal Decree 531/2025 makes specific reference to the environmental rules evoking **prevalence of environmental objectives, as confirmed in the wording of Article 26, in particular in the second paragraph:**

“Based on the provisions established in the first additional provision of Law 42/2007, of 13 December, the limitations on fishing activities regarding the protection, conservation and regeneration of fishing resources in outer waters, and the limitations or prohibitions of fishing activities in the outer waters of Protected Sites and Natura 2000 protected sites, shall be established by the Government in accordance with the criteria established in environmental regulations, in accordance with the provisions of Article 26 of Law 5/2023 of 17 March, on Sustainable fishing and Fishing Research”³⁸.

The legal consequences of this referral to Article 26 of LPSIP require a specific analysis of the interpretation of that Article, which is carried out as follows.

Legal framework: Article 26 of LPSIP and other relevant applicable provisions

As explained in the Preamble to LPNB (Natural Heritage and Biodiversity Law), fishing resources are excluded from the scope of application, and an additional provision is included on the exclusive authority of the State on maritime fishing (Article 149.1.19 EC)³⁹. The **first additional provision of LPNB**, for its part, establishes the following:

“First additional provision. Exercise of the authority of the General State Administration on marine areas, habitats and species.

Without prejudice to the provisions of Law 41/2010 of 29 December, and the competences attributed to the Regional Authorities on this matter, the exercise of State authority on marine areas, habitats and species shall be subject to the provisions established in the following paragraphs:

- a) *Protection, conservation and recovery of fishing resources in the outer waters will be regulated in accordance with the provisions of Title I, Chapters II and III of Law 3/2001 of 26 March.*
- b) *The limitations or prohibitions of fishing in outer waters of Protected Natural Sites and Natura 2000 protected sites will be set by the Government in accordance with the criteria established in environmental regulations, pursuant to the provisions of Article 18 of Law 3/2001 of 26 March.”*

³⁸ Section II of the Preamble to Royal Decree 531/2025, of 24 June.

³⁹ “Finally, the law includes an additional provision on the exercising of State competences on marine areas, habitats and species.

Fishing resources are excluded from the scope of application of the Law, since their protection, conservation and recovery, and also regulation and management of fishing is the exclusive competence of the State on maritime fishing in outer waters, although it is conditioned to the inclusion of environmental measures pursuant to the provisions established in Article 130 of the Treaty establishing the European Union, and Article 6 on the Convention on Biological Diversity signed in Rio de Janeiro on 5 June 1992.

Hence, reference is made to application of Law 3/2001 regarding all matters on the protection, conservation and recovery of fishing resources insofar as the measures comprising such and the marine environment in question are included in the subject “maritime fishing” exclusively attributed to the State pursuant to Article 149.1.19 of the Spanish Constitution (Constitutional Court Judgment 38/2002, Ground for Decision 11”).

The aforementioned **Article 18 of Law 3/2001 of 26 March on maritime fishing**, currently repealed by the single repealing provision of Law 5/2023 of 17 March, establishes the following:

“Article 18. Regime applicable to protected areas.

In the outer waters of protected natural sites, the fishing limitations or prohibitions shall be set by the Government in accordance with the criteria established in environmental regulations”.

Currently, the referrals made by LPNB (Natural Heritage and Biodiversity Law) to Law 3/2001 must be understood as being made to the relevant provisions of the new LPSIP of 2023. Hence, Article 18 has currently been replaced by Article 26 of LPSIP. It is a very incisive specific provision – which presides over Chapter II on *Protection Measures in Protected Natural Areas and protected marine species* – which implements and specifies the general principle of policy coordination within the scope of competence of the General State Administration mentioned in the third additional provision.

“Article 26. Regime applicable to Protected Natural Areas and Natura 2000 Sites.

The regime on fishing limitations or prohibitions in the outer waters of Protected Natural Areas and Natura 2000 protected Sites shall be established by the Government on joint proposal by the Ministry for Ecologic Transition and Demographic Challenge and the Ministry of Agriculture, Fishing and Food, each within the scope of its respective authority, through the measures embodied in this Law and in accordance with the criteria established in environmental regulations, in particular, in the first additional provision of Law 42/2007 of 13 December.

The said limitations shall be established ensuring that they do not undermine the achievement of the conservation objectives established for the natural protected area or for the Natura 2000 site in question, and must be coherent with the conservation measures established for such areas and sites in their respective management instruments”.

The second paragraph of Article 26 of LPSIP was not included in the former Article 25 of the draft bill on sustainable fishing and research submitted by MAPA in January 2021, nor in the official draft bill approved on 1 June 2021. It was added during the executive phase, specifically in the drafting of the [draft bill approved by the Council of Ministers on 17 May 2022](#) and later consolidated as Article 26 without any additional amendments when passed through Parliament. The change is due to the need **to adapt regulation of fishing activity in protected natural areas and in marine Natura 2000 sites to guarantee better coherence with current environmental regulations**, in particular Law 42/2007 of 13 December on Natural Heritage and Biodiversity (especially, the first additional provision). This strengthens the protection of marine habitats and biodiversity, ensuring that the regime of limitations on fishing activities does not compromise the conservation objectives of those areas established in the relevant management plans.

Consequently, all the provisions directly linked to that precept all have the same purpose, i.e. that of safeguarding or prevalence of environmental objectives, which was finally reinforced in clearer terms in the second paragraph of the new Article 26 of LPSIP.

In addition to the aforementioned provisions, those concerning the Protected Marine Sites in Spain are to be added, since all SACs and SPAs, and marine reserves of interest for fishing,

are “areas that can be included” in the said network (Article 33 of LPNB, and Article 22.3 of LPSIP, respectively).

Likewise, the fact that Article 26 is applicable to all the protected natural sites, including protected marine areas, must also be taken into account, as also established in Article 33 and 37 of LPNB.

Legal requirements on the regime of limitations to fishing activities in marine Natura 2000 sites

From the reading of the set of aforementioned provisions we are able to deduce that **the regime on limitations or prohibitions of fishing activities in outer waters in marine Natura 2000 sites⁴⁰ is legally subject to a number of formal and material procedural requirements, which are applicable regardless of whether or not there is an overlap with other protection categories (including marine reserves of interest for fishing or protected areas of interest for fishing), since the rule does not differentiate between them, nor does it in any way limit application in those cases.**

Those requirements would be those identified as follows.

Article 26 is largely a **procedural rule**. It establishes the channel for implementing those measures, which “*will be set by the Government on joint proposal by the Ministry for Ecologic Transition and Demographic Challenge and the Ministry for Agriculture, Fishing and Food, each covering its own scope of authority*” (Article 26 of LPSIP and 37 of LPNB). In practice, the sufficiency of current regulations should be assessed in order to guarantee compliance by the competent Ministries with the obligations inherent to this principle of institutional cooperation, promoting, where applicable, the development of procedure rules to improve application of Article 26.

An important **formal requirement** in the application of Article 26 of LPSIP is added to this. The regime on fishing activity limitations or prohibitions **must be integrated into the management plans of each area or site** in accordance with the obligations established in the Habitats Directive and the Birds Directive, and Article 46.1.a) and 46.2 of LPNB, regarding the inclusion in the management plans of at least the site's conservation objectives, and “*the appropriate measures to maintain the sites in favourable conditions of conservation*”, and “*to avoid deterioration of natural habitats and the habitats of the species in the Natura 2000 sites, and any alterations that could affect the species that were the reasons the sites were initially designated as such, to the extent that such alterations could have a notable effect*” regarding the Natura 2000 Network conservation objectives; more specifically, “*to maintain*

⁴⁰ The concept of outer waters legally covers the “maritime waters under Spanish sovereignty or jurisdiction located outside the baselines, as considered in Law 20/1967 of 8 April, on the extension of maritime jurisdiction to twelve miles, for the purposes of fishing, and in Royal Decree 2510/1977 of 5 August, on jurisdictional waters, straight baselines for delimiting”. (Article 3.2 of LPSIP).

or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest", Article 2.2 of the Habitats Directive)⁴¹.

Finally, the need to respect the **material limits** stemming from the obligation of guaranteeing the prevalence of environmental objectives, which are imposed through the **safeguard clause for conservation objectives of marine Natura 2000 protected sites in the second paragraph of Article 26**, in accordance with the obligations of the Habitats Directive and Birds Directive, confirmed in the CFP rules, which reassert the obligation by States to implement the necessary conservation measures to comply with environmental legislation, in particular Article 6 of the Habitats Directive⁴². More specifically, that provision provides that the limitations or prohibitions on fishing activity in outer waters of Natura 2000 sites "*shall be established ensuring that the achievement of conservation objectives established for the Protected Natural Site or for the protected site of the Natura 2000 Network in question is not undermined and shall be consistent with the conservation measures established for them in their management instruments*". It is an express condition; interpretation is clear and it comprises a preferential applicable rule given its special nature.

On the other hand, suffice it to recall that adequate compliance with this material condition in application of Article 26, necessarily rests on full compliance with the obligation declared by the CJEU, that conservation objectives are formally established and are site-specific (also in regard to any stresses affecting them), bearing in mind that their specific values are to be precise (CJEU judgment on subject matter C-849/19, *Commission v Greece*, as discussed previously.⁴³

Prevalence of environmental objectives in the interpretation and application of Article 26 of LPSIP

Both literal interpretation and systematic and finalist interpretation of Article 26 of LPSIP lead to the conclusion that **the regime on fishing activity limitations in the outer waters of protected marine Natura 2000 sites must not undermine the environmental objectives of the Natura 2000 Network, in particular the specific conservation objectives of each site**.

In other words, **the environmental objectives of the protected marine Natura 2000 Sites shall necessarily prevail over any other interests (including economic and social impacts of the measures in question on the fishing sector)**.

⁴¹ This requirement is backed up by Article 33.2 of LPNB applicable to the areas that can be integrated in the Spanish AMOP Network (Marine Protected Sites), among which, the marine SACs and SPAs are included, and also marine reserves of interest for fishing.

⁴² See section 6 of this report.

⁴³ See section 6 of this report.

The “*environmental objectives safeguard clause*” of Article 26 of LPSIP, and Article 45 EC

The second paragraph of Article 26 includes a specific clause of prevalence of environmental objectives. Literal, systematic and finalist interpretation of the clause concurrently lead to this conclusion.

Literal interpretation of the second section of Article 26 is clear and leaves no room for doubt when it specifically establishes that the limitations or prohibitions on fishing activity in outer waters of Natura 2000 protected sites ***"SHALL BE ESTABLISHED ENSURING THAT THE ACHIEVEMENT OF CONSERVATION OBJECTIVES established for the Protected Natural Site or for the protected site of the Natura 2000 Network IN QUESTION IS NOT UNDERMINED AND SHALL BE CONSISTENT WITH THE CONSERVATION MEASURES ESTABLISHED FOR THEM IN THEIR MANAGEMENT INSTRUMENTS".*** This clarifies and reinforces the criteria of prevalence of environmental objectives that were also specifically safeguarded, although less concisely and formally, in the final item of Article 18 of Law 3/2001 of 26 March on maritime fishing in the State.⁴⁴ Of all the applicable provisions on the subject matter that have been referred to, it stems that literal interpretation, through the clarity of its terms⁴⁵, is confirmed and reinforced through systematic and finalist interpretation.

Environmental prioritization in the fishing sector in Spain is derived from **Article 45 of the Spanish Constitution**, with the Judgement by the Constitutional Court 99/2022 on fauna protection being particularly relevant, in which it is expressly stated that **ecological protection measures prevail over extractive activities such as hunting or fishing** in the following terms.

"Having specific regard to the regime on wild fauna, which is the secondary subject matter affected by this process, we have confirmed that the measures aimed at the protection thereof must be considered materially basic 'as they are aimed at safeguarding ecological interest, which is the expression of the general and public interest in conserving biological heritage that is scarce and easily subject to extinction', and consequently 'they must prevail over the regulations on hunting and fishing, as such activities are only legitimate to the extent that they are carried out in full respect of environmental requirements, without compromising or endangering the wild fauna conservation measures, since the hunting requirements not only include compliance with the requirements established for such activity, but also protection thereof, regarding the environment'

⁴⁴This clarifies and reinforces the criteria of prevalence that were already specifically stated, although more concisely, in the final item of Article 18 of Law 3/2001 of 26 March on maritime fishing in the State. It was included by referral to it in Article 37.3 and Section b) of the first additional provision of LPNB. In particular, it provided that in cases where fishing activity limitations and prohibitions in outer waters would be set ***"in accordance with the criteria established in environmental regulations"***.

⁴⁵In relation to interpretation of Article 3.1 of the Civil Code, the Supreme Court highlighted the importance of complying with the literal interpretation when it is imposed through the very clarity of its terms, arguing that ***"although it is true that in accordance with Article 3.1 of the Civil Code, the literal interpretation criteria must be complemented with a finalist interpretation, there can be no doubt that interpretation of a precept" fundamentally considering its spirit and ultimate purpose "may not entail, under any circumstances, an interpretation contrary to the letter of the word".*** (Supreme Court Judgment of 28 October 2016, Ground for Decision 2).

(by all, Constitutional Court Judgments 69/2013 of 14 March, Ground for Decision 6 and 148/2020 of 22 October, Ground for Decision 3)⁴⁶.

Compliance with the Habitats Directive, the Birds Directive and the Marine Strategy Framework Directive and the CFP rules.

The safeguard clause for conservation objectives of marine Natura 2000 protected 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 and Article 6 of the Habitats Directive, as expressly provided for in Article 11, and other related provisions, of Regulation (EU) No 1380/2013 on the Common Fisheries Policy (CFP) rules.

In view of the interpretation criteria of EU Law affirmed in CJEU case law⁴⁷, finalist interpretation reinforces the literal and systematic interpretation of those provisions.

Indeed, the **environmental favor of Union Law in accordance with the principles of sustainable development enshrined in international law**, according to which “*the right to develop must be exercised in a way that fairly meets the environmental necessities and the development of present and future generations*”, and which “*protection of the environment shall be a comprehensive part of the development process and may not be considered to be separate from it*”⁴⁸. Likewise, the **principle of environmental protection** is mainly enshrined in Article 11 of the TFEU, which establishes the environmental protection requirements that are to be integrated into the EU's policies and activities, particularly with the aim of promoting sustainable development. Moreover, Article 191 of the TFEU details the objectives of the EU's environmental policy, which among others include: “*preserving, protecting and improving the quality of the environment*” and “*prudent and rational utilisation of natural resources*”. The principle of environmental protection is also present in Article 37 of the Charter of Fundamental Rights of the European Union, which mandates that “*the Union's policies shall integrate and ensure a high level of environmental protection and quality of the environment in accordance with the principle of sustainable development*”.

The Habitats Directive, which “*contributes to the general objective of sustainable development*”⁴⁹, is based on the claim that “*preservation, protection and improvement of environmental quality, including the conservation of natural habitats and wild fauna and flora*,

⁴⁶ Judgment 99/2022, of 13 July 2022. Unconstitutionality appeal 2527-2022. Lodged by the President of the Government in relation to Article 38.2 a) and 8, and different Annexes of Law 4/2021 of 1 July on hunting and sustainable management of hunting resources in the region of Castilla & León. Environmental protection authority: annulment of regional precepts that permit hunting of wolf populations located north of the River Douro. Individual vote (Official State Journal 195 of 15 August 2022, pages 118546 to 118570).

⁴⁷ As stems from repeated case law, in order to interpret a provision of Union Law, not only should its wording be taken into account, but also its context and the objectives pursued by the rule it is a part of. See also the judgment of 9 January 2025, *Communes of Schaerbeek and Linkebeek* (C-627/23, EU:C:2025:9), Section 28 and cited case law.

⁴⁸ Principles 3 and 4 of the Rio Declaration on the Environment and Development of 1992.

⁴⁹ Preamble, paragraph seven.

are an essential objective of general interest for the Community⁵⁰. The measures that are taken in view thereof, in particular for compliance with Article 6 of the Habitats Directive (similarly of Article 46.1 a) and 46.2 of LPNB), “***shall have the purpose of maintaining or restoring the natural habitats and the wild fauna and flora species of community interest to a favourable status of conservation***” (Article 2.2 in relation to Article 3.1)⁵¹ and “***shall take into account the economic, social and cultural demands, as well as the regional and local particularities***” (Article 2.3). **Therefore, integration of the economic, social and cultural demands shall be promoted, providing that the purpose of the conservation measures is duly guaranteed.**

On the other hand, the CFP objectives consist of “*guaranteeing that the fishing and aquaculture activities are environmentally sustainable in the long-term, and that they are managed in coherence with the objectives of generating economic, social and employment benefits, and that they contribute to the availability of food products*” (Article 2.1 of Regulation (EU) No. 1380/2013)⁴⁴. Those objectives include creating conditions that make the fishing capture and processing industry economically viable and competitive, and the onshore fishery-related activities, and that they also contribute to ensuring a suitable living standard for persons who depend on fishery activities, taking into account coastal fishing and socio-economic aspects (Article 2, paragraph 5, Letters c) and f)). The CFP must also “*be coherent with the Union’s environmental legislation*” (Article 2.5 j)). The precautionary approach and prevention principle, and the ecosystem approach are comprehensive principles of the CFP (Article 2).

⁵⁰ Preamble, paragraph five.

⁵¹ A recent judgment by the CJEU which is highly relevant for the preservation of biodiversity in marine Natura 2000 sites, contributes to defining the scope and content of the obligations of member States to establish the necessary conservation measures in marine Natura 2000 sites under the following terms:

“129. Il ressort, en outre, de l’article 6, paragraphe 1, de la directive « habitats » que les États membres établissent les mesures de conservation nécessaires impliquant, le cas échéant, les mesures réglementaires, administratives ou contractuelles appropriées. À cet égard, le paragraphe 2 dudit article précise que les mesures de conservation appropriées visent à « éviter [...] la détérioration des habitats naturels et des habitats d’espèces ainsi que les perturbations touchant les espèces pour lesquelles les zones ont été désignées, pour autant que ces perturbations soient susceptibles d’avoir un effet significatif eu égard aux objectifs de la présente directive ».

130. L’objectif poursuivi, conformément à l’article 6, paragraphe 2, de la directive « habitats », tel que lu à la lumière des dispositions des articles 1^{er} et 3 de cette même directive, vise ainsi, a minima, afin d’éviter leur détérioration, à conserver les habitats dans leur état existant, quel qu’il soit, pour qu’ils puissent être maintenus dans cet état, si celui-ci est jugé favorable, ou, le cas échéant, pour qu’ils puissent être rétablis dans un état de conservation leur permettant, pour l’essentiel, de perdurer dans une aire de répartition stable ou en extension en préservant la structure et les fonctions essentielles à leur maintien.

131. Le caractère approprié d’une mesure de conservation, qui vise, ainsi qu’il vient d’être dit, à conserver, a minima, l’état existant, quel qu’il soit, n’implique donc pas, contrairement à ce que prétend la requérante, de « montrer dans quel état se trouve un habitat avant l’adoption des mesures de restriction de pêche ». En outre, le respect du principe de proportionnalité n’implique pas de « démontrer, avant l’adoption des restrictions de pêche, que les mesures proposées sont effectivement appropriées pour atteindre [l’état de conservation souhaité] », mais seulement qu’elles ne sont pas manifestement inaptes à prévenir la détérioration des habitats concernés par l’objectif de conservation poursuivi.

132. Conformément à la définition de l’état de conservation d’un habitat naturel donnée à l’article 1^{er}, sous e), de la directive « habitats », une mesure de conservation repose, en effet, non sur la « détermination de l’état actuel et de l’état souhaité des habitats », mais sur « l’effet de l’ensemble des influences agissant sur [cet habitat] qui peuvent affecter à long terme sa répartition naturelle, sa structure et ses fonctions » (Judgment of the General Court of 21 May 2025 – VDK/Commission, T-265/23, ECLI:EU:T:2025:523. Since there is no official version in the Spanish language, the French language version has been used).

The coherence of the CFP with environmental Union 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 norms and procedures of Article 11 and related provisions⁵². Hence, **Paragraph 1 of Article 11 of that Regulation includes its own environmental objectives safeguard clause, since the necessary conservation measures in the marine Natura 2000 sites⁵³, which according to CJEU case law can consist of limitations and prohibitions of fishing activities such as those that “generally prohibit professional maritime fishing with trawling gear and bottom nets” in marine Natura 2000 sites⁵⁴ - must comply with the general objectives of the CFP, and where applicable enforce the additional specific condition of “complying with the relevant objective of (environmental) legislation to be applied”.**

“Article 11 on the Conservation Measures required to comply with currently existing obligations in view of Union environmental legislation

1. Member States are authorised to implement conservation measures that do not affect fishing vessels from other member States that are applicable downstream of their sovereignty or jurisdiction and that are necessary to comply with their obligations in view of paragraph 4 of Article 13 of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC⁴⁸, providing that such measures are compatible with the objectives established in Article 2 of this Regulation, that they comply with the objective of the Union's relevant legislation being applied, and that they are no less strict than the measures envisaged in Union legislation”.

Consequently, literal, systematic and finalist interpretation of Article 11.1 of Regulation (EU) 1380/2013 leads us to the conclusion that whenever conservation measures consisting of fishing activity limitations or prohibitions are necessary, the economic objectives must be taken into account providing that integration thereof is possible, but ultimately, the conservation objectives of marine Natura 2000 sites shall prevail, which in any event must be guaranteed, since the express condition of such measures is imposed “TO COMPLY WITH THE OBJECTIVE OF THE RELEVANT LEGISLATION OF THE UNION BEING APPLIED”.

⁵² When conservation measures are necessary consisting of limitations or prohibitions of fishing activity “*in order to comply with the obligations in view of [...] Article 6 of the Habitats Directive*”, member States must implement the procedures and make the relevant decisions to achieve their objectives. Hence, **in accordance with Article 6 of the Habitats Directive and Article 46.4 of LPNB, and empowered by Article 11.1 and 20.1 of Regulation (EU) 1380/2013, Spain is obliged to adopt the conservation measures and conduct the necessary assessment and management in marine Natura 2000 sites downstream of their sovereignty or jurisdiction (Territorial Waters and Exclusive Economic Zone) in relation to Spanish fishing vessels**. The State is also empowered to establish these measures (and obliged to do so if they are necessary) in regard to fishing vessels from other member States that could be affected, to a distance of 12 nautical miles from the baselines (consultation procedure of Article 20.2 of Regulation (EU) 1380/2013). Likewise, cooperation with other affected member States should take place for application beyond the 12 nautical miles for vessels from other member States who have a direct interest in the management of those fisheries (joint recommendations procedure of Article 11.3 of Regulation (EU) 1380/2013).

⁵³ Articles 6, 7 and 8 of Regulation (EU) 1380/2013 on CFP rules.

⁵⁴ [Judgment of the CJEU, 13 June 2018, C-683/16, Deutscher Naturschutzing, C-683/16, ECLI:EU:C:2018:433](https://curia.europa.eu/juris/2018/433/index.cfm?language=en), Section

In other words, that is the significance of the conservation objectives safeguard clause concerning marine Natura 2000 sites set forth in the second paragraph of Article 26 of LPSIP, as discussed previously.

In view of the foregoing considerations, as called for by the Commission “[*t*he environmental and fishing policies must be considered as partners, which strive to achieve common objectives based on the most advanced biological science”⁵⁵. In general, CJEU case law prioritises environmental sustainability as a prior condition for economic and social long-term benefits, as it did in the Kramer judgement⁵⁶. The need for the concept of economic interests in question must be underscored that take into account all the economic benefits stemming from the creation and conservation of protected marine sites, including the long-term benefits for fishing.⁵⁷

In any event, the baseline must be the consideration that **the environmental objectives of the Habitats Directive are an essential objective of general interest of the Union**⁵⁸. In this respect, the judgement by the Court of Justice in the Lappel Bank case is worthy of mention, in which the British Government intended to encroach upon a Special Protected Area to cover the needs of extending a loading port in the United Kingdom owing to economic development reasons that would only have entailed encroaching on 1% of the SPA. The Court of Justice rejected it affirming that “**a member State cannot take economic demands into account considering that they are of a higher general interest to those of the ecological objectives set forth in this Directive**”⁵⁹. Although that judgment referred to the Birds Directive, the affirmation is similarly valid regarding the Habitats Directive. In this case, the exceptional circumstances and the requirements set forth in Article 6, paragraph 4 must be taken into account, which, where applicable, must be strictly complied with in regard to fishing activities⁶⁰.

⁵⁵ [Green Book, Towards a future maritime policy for the Union: A European vision for the oceans and seas \(COM\(2006\) 275 final\), 7 June 2006](#), p. 10.

⁵⁶ In this case, the court highlighted the importance of ensuring long-term sustainability of fishing activities through the implementation of conservation measures as a guarantee of food security “*that the measures to conserve the sea's resources by means of setting catch quotas and limiting fishing efforts, although they restrict “production” in the short term, they precisely intend to avoid “production” undergoing a reversal that would seriously compromise the supply for consumers*” and “*therefore, the fact that such measures reduce the quantities that States can market, such measures cannot be classed as measures that are forbidden by the Treaty, since the determining factor is that they are necessary to ensure optimum, constant yields of fish in the long term*” (Judgment of the CJEU of 14 July 1976, Kramer, accumulated subjects 3/76, 4/76 and 6/76, Sections 58 and 59)

⁵⁷ A recent fishing management study argued in favour of establishing marine protected areas as **effective to meet the fishing and biodiversity conservation objectives**. The authors claim that such areas should be established as closed areas because they entail proven benefits for conservation in their ability to promote resilient ecosystems and seed outer areas. It can be seen that MPAs “preserve the biological diversity at regional scale, at all levels: specific, marine habitat/seascape, and also the genetic diversity and the structure of populations, which permits natural selection to take place”. Moreover, “it maintains the natural size and age structure of the populations, thus maximising potential fertility, allowing the export of biomass to take place from the nucleus zones to the regulated zones, thus absorbing fluctuations stemming from deviations of optimum theoretical effort in the fishing zone” ([A Pérez-Ruzafa, J. García- Charton & C. Marcos, “East Atlantic vs. Mediterranean Marine Protected Areas as Fisheries Management Tool”](#), Frontiers of Marine Science, Volume 4, 2017).

⁵⁸ Preamble, paragraph five.

⁵⁹ [Judgment of the Court of 11 July 1996, Royal Society for the Protection of Birds, C-44/95, ECLI: ECLI:EU:C:1996:297](#), Section 31.

⁶⁰ [Commission Notice. Assessment of plans and projects in relation to Natura 2000 sites: methodological guidance on the provisions of Article 6, paragraphs 3 and 4 of the Habitats Directive 92/43/EEC](#), p. 6.

Likewise, in relation to the demand that fishing activities be managed in coherence with the objectives of generating economic, social and employment benefits (Article 2.1 of Regulation (EU) No. 1380/2013), case law of the CJEU provides recent practical examples of conservation measures consisting of limiting fishing activities in certain protected areas where the achievement of environmental objectives is balanced with the integration of economic interests on the economic viability of certain traditional fishing methods (such as traditional shrimp fishing) with a moderate effort by fisheries, due to the lack of other fishing grounds in the area, by delimiting a fishing corridor within the area in question. In any event, integration of those interests is justified by the fact that the spatial management measures focusing on protecting peripheral fishing areas for that type of gear (instead of the main fishing areas) displace the load towards the main fishing area and that this will improve the average condition of the seabed⁶¹.

CJEU case law also provides examples of cases where modulation of CFP management measures has been carried out (such as setting the TAC in the case of mixed fisheries), dealing with the socio-economic impact of those measures⁶². Nevertheless, these cases are not necessary conservation cases in order to comply with the Habitats Directive, the Birds Directive or the Marine Strategy Framework Directive, and therefore their relevance to this report is somewhat limited⁶³.

On the other hand, the CJEU rejected the claim by Spain of questioning certain management/conservation measures within the framework of the CFP, with arguments of an economic nature, attempting to subordinate the achievement of environmental objectives to the economic interests of the fishing sector. This was firstly done by rejecting the Spanish request to annul the regulation that set the maximum allowable fishing effort for demersal longliners and the catch limits of blue and red shrimp in certain areas of the Mediterranean. Spain's basic argument was that, in accordance with Article 2, paragraph 1, of Regulation 1380/2013, the long-term environmental sustainability objective of the fishing activities must be managed in coherence with the objectives of generating economic and social benefits through those activities, and keeping a balance between the objectives, and the fact that the

⁶¹ [Judgment of the General Court of 21 May 2025 -VDK/Commission, T-265/23, ECLI:EU:T:2025:523](#) Section 191.

⁶² CJEU Judgment of 11 January 2024, *Friends of the Irish Environment CLG*, C-330/22, ECLI:EU:C:2024:19; CJEU Judgment, of 25 June 2025, ClientEarth v EU Council, T-577/22, ECLI: ECLI:EU:T:2025:630. ⁵⁷ In the aforementioned judgment of 21 May 2025, the General Court included a generic reference to the principle of proportionality in the following terms: "The principle of proportionality, comprising part of the general principles of Union Law, requires acts by the Union's institutions not to exceed the appropriate and necessary limits to achieve the legitimate objectives pursued by the rule in question, understanding that when a choice is available between several appropriate measures, the least onerous one should be employed and that the disadvantages must not be disproportionate regarding the pursued objectives (see judgment of 14 November 2013, SFIR and others, C 187/12 to C 189/12, EU:C:2013:737, Section 42 and cited case law; judgment of 11 January 2017, Spain/Council, C 128/15, EU:C:2017:3, Section 71)" (Section 53).

⁶³ In the aforementioned judgment of 21 May 2025, the General Court included a generic reference to the principle of proportionality in the following terms: "The principle of proportionality, comprising part of the general principles of Union Law, requires acts by the Union's institutions not to exceed the appropriate and necessary limits to achieve the legitimate objectives pursued by the rule in question, understanding that when a choice is available between several appropriate measures, the least onerous one should be employed and that the disadvantages must not be disproportionate regarding the pursued objectives (see judgment of 14 November 2013, SFIR and others, C 187/12 to C 189/12, EU:C:2013:737, Section 42 and cited case law; judgment of 11 January 2017, Spain/Council, C 128/15, EU:C:2017:3, Section 71)" (Section 53).

closed fishing areas that had been established and the selective measures of trawling fishing gear that had been proposed, allowed achieving the objective pursued by the Council in a less harmful way for Spanish socio-economic interests. Ultimately, the discussion was not actually the prevalence of the ecological objective of the measures, but rather the possibility of integrating socio-economic interests in the implemented measures, and the relevance of the measures questioned by Spain and implemented by the Council⁶⁴.

Particularly relevant are the more recent judgements by the General Court of 11 June 2025, rejecting the appeals filed by Spain (subject T-681/22) and different Galician and Asturian fishing entities (subject T-781/22), contesting - in relation to fixed bottom gear - the designation of certain zones (87 areas) where fishing using bottom gear in general in the North-eastern Atlantic at depths over 400 metres is prohibited as a conservation measure of Vulnerable Marine Ecosystems (VME). In Spain's case, the prohibition also affects bottom trawling fishing in the Cantabrian and North-western sub-fishing ground, and the sub-fishing ground in the Gulf of Cadiz. MAPA decided to contest the Delegated Regulation of the Commission establishing those measures before the CJEU, considering that the general prohibition was "*disproportionate and unfair as it was not based on the most up-to-date available scientific information, there was no impact report and it thus breached the Common Fisheries Policy principles that establish the necessary balance in the decisions that are made, between protection of marine biodiversity and maintaining sustainable fishing*"⁶⁵.

These judgements include claims of particular relevance for the interpretation of the principles enshrined in Article 2 of Regulation (EU) 1380/2013. The General Court concluded that Spain could not uphold its reasoning that "*in view of the CFP and the principle of proportionality, a pillar could not be developed, referring to the environment, without taking into consideration the other two pillars, namely the economic and social aspects*". On the other hand, it concluded that the prohibition on bottom fishing in all the areas included in the list of VME provided for in Article 9.9 of the base regulation (Regulation 2016/2336⁶⁶) "*precisely has the objective of reducing the possible repercussions of fishing activities in deep waters of the VME to the maximum. Therefore, it is effectively a measure included within the framework of application of the fundamental approaches listed in Article 2, paragraphs 2 and 3 of Regulation 1380/2013*" based on the following considerations:

"More specifically, within the said framework, legislators are not obliged to conduct a specific weighting of interest on the protection of the marine environment linked to sustainable exploitation of marine biological resources, with the interests of the people who carry out fishing activities and the socio-economic aspects of such activities. In effect, within the context of technical measures, the author of the act is not obliged to draw up specific reasoning for their decisions if the contested act reveals the essential part of the pursued purpose [Judgement of 16 November 2023, Spain/Council (Complementary conservation measures in the Western Mediterranean), C 224/22, not published, EU:C 2023:891, Sections 36

⁶⁴ [CJEU Judgment of 16 November 2023, Spain v Council, C-224/22, ECLI:EU:C:2023:891](#), Sections 95, 96 and following.

⁶⁵ [Spain appeals against the Court of Justice of the European Union regulation on fishing in deep waters. Circular by MAPA; 14 November 2022.](#)

⁶⁶ 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-west Atlantic and provisions for fishing in international waters of the north-west Atlantic and repealing Council Regulation (EC) No 2347/2002.

and 34]. Having regard to the allegations by the Kingdom of Spain, pointing out that the legislator has not distinguished between the fishing gear according to their impact (see Section 117 above), that the latter breached its obligation of reasoning the choice of the controversial measure, specifically assessing the effects of fixed bottom gear in VMEs, in order to consider the interests of protecting the marine environment against such effects with the socio-economic aspects of fishing activities employing such gear, and the socio-economic consequences of the controversial prohibition, this accusation must be rejected.

In effect, it must be pointed out that recital 1 of the baseline Regulation refers to a precautionary and ecosystem approach.

*On the other hand, it stems from recital 9 of the baseline Regulation, the measure established in Article 9, paragraph 9 of the said Regulation, precisely has the objective of reducing possible repercussions of deep-water fishing activities on VMEs to the maximum. Therefore, it is effectively a measure included within the framework of application of the fundamental approaches listed in Article 2, paragraphs 2 and 3 of Regulation 1380/2013, to which the considerations in the foregoing sections 126 and 127 are applicable*⁶⁷.

The General Court once again reaffirms the same idea when it decisively concludes that “**the objective of long-term environmental sustainability of fishing activities comprises a fundamental objective of the CFP (Article 2, paragraph 1 of Regulation 1380/2013), whose achievement works in favour not only of protecting the marine ecosystem, but also the long-term economic and social viability of fishing activities**”:

*In view of the foregoing, the Union's legislators, in the exercise of their broad authority to assess the matter (see, by analogy, the judgement of 23 March 2006, Unitymark and North Sea Fishermen's Organisation, C-535/03, EU:C:2006:193, Section 57), in order to avoid the risk of the adverse effects of fixed fishing gear, despite the probable negative socio-economic consequences, it could be considered necessary to prohibit bottom fishing in general in the areas where VMEs are known to occur or are likely to occur. In this context, as stated in Section 127 previously, the legislator was not obliged to conduct a specific reasoned weighting regarding the interest of protection of the marine environment with the interests of the persons who carry out fishing activities and the socio-economic aspects of such activities. In this respect, we should recall that the long-term environmental sustainability objective of fishing activities is a fundamental objective of the CFP (Article 2, paragraph 1 of Regulation 1380/2013), and achievement thereof works not only in favour of marine ecosystem protection, but also in benefit of the long-term economic and social viability of fishing activities*⁶⁸.

Indeed, the same reasoning can logically be applied to the cases where States, in fulfilment of their environmental obligations, must implement management and conservation measures to protect marine ecosystems; in particular, to protect sensitive habitats, including the vulnerable marine ecosystems that are downstream of the sovereignty or jurisdiction of a member State, as required pursuant to Article 12, paragraphs 3 and 4 of Regulation (EU) 2019/1241⁶⁹.

⁶⁷ Sections 129 to 131.

⁶⁸ Section 139.

⁶⁹ Included among the sensitive habitats are the habitat types listed in Annex I and the habitats of species listed in Annex II of the Habitats Directive (Article 6, paragraph 7 of Regulation (EU) 2019/1241). In order to define vulnerable marine ecosystems, reference is made to Article 2, Letter b) of Regulation (EC) 724/2008 of the Council.

A good example of this is in the dicta of the Council of State of France concerning compliance with the Habitats Directive and the CFP rules regarding the strandings of cetaceans in the Bay of Biscay. That body passed an important [judgement](#), pointing out the State's obligation to implement the necessary conservation measures in compliance with the CFP and the Habitats Directive; in particular to close off the fishing zones in the Bay of Biscay for adequate periods, within the deadline of six months, in order to mitigate the accidental deaths of dolphins and porpoises⁷⁰. Following that decision, the Secretary of State for the Sea prohibited fishing with certain nets over a four week period in 2024, 2025 and 2026 through [Decree of 24 October 2023](#). The Decree established the prior prohibition for 2024 of a number of exceptions challenged by several environmental organisations that considered them to be too broad and contrary to the law. [On 31 July 2023](#) protection measures were adopted consisting of suspending the exceptions of spatial-temporal closure of fishing in the Bay of Biscay waters⁷¹. After citing the content of Article 2 of Regulation 1380/2013, Article 6 and Article 12 of the Habitats Directive (Section 7 of the judgement), the Council of State of France argued the following:

*11. En particulier, il résulte des dispositions des articles 2 du règlement (UE) n° 1380/2013 "PCP" et des articles 3 et 4 du règlement (UE) 2019/1241, citées aux points 3 et 4, qu'il incombe à l'Etat de réduire au minimum et si possible éliminer les captures accidentelles d'espèces protégées imputables à la pêche, et des termes de l'article 12 de la directive 92/43/CEE "Habitats", citées au point 7, qu'il lui appartient de prendre les mesures de conservation nécessaires pour faire en sorte que les captures ou mises à mort involontaires n'aient pas une incidence négative importante sur ces espèces, au regard de l'objectif consistant à assurer leur maintien ou leur rétablissement dans un état de conservation favorable. Il résulte des dispositions de l'article 11 du règlement (UE) 2019/1241, citées au point 5, que l'Etat peut, sur la base des meilleurs avis scientifiques disponibles et pour les navires battant son pavillon, mettre en place, à cette fin, des mesures d'atténuation ou des restrictions relatives à l'utilisation de certains engins de pêche*⁷² ».

[The Council of State of France passed judgement on 30 December 2024 on the substance of the matter](#)⁷³, partially allowing the appeal and declaring a closure of four weeks in the winter period of 2024 as pertinent. Moreover, it took note that as a result of the developments, [Delegated Regulation \(EU\) 2024/3089 of the Commission of 30 September 2024](#) was adopted, which prohibits fishing using certain gear in the Bay of Biscay between 22 January and 20 February 2025. Likewise, in recital 19 it reaffirms both the authority of the Commission and the authority of the member States to adopt additional measures that could be necessary, also in relation to the Habitats Directive:

"This Delegated Regulation is to be understood without prejudice to any additional measures for protection of the common dolphin and other small cetaceans that the Commission may adopt in view of Union Law, also in relation to application of Council Directive 92/43/EEC or, in duly justified urgent situations related to serious threats to conservation of marine biological resources or the marine ecosystem in accordance with Article 12 of Regulation (EU) 1380/2013 of the

⁷⁰ [Judgment of the Council of State of France of 20 march 2023 \(No. 449788, ECLI:FR:CECHR:2023:449788.20230320\)](#)

⁷¹ [Dictum on protection measures of the Council of State of France of 22 December 2023, \(No. 489926, 489932, 489949\).](#)

⁷² [Dictum on protection measures of the Council of State of France of 22 December 2023, \(No. 489926, 489932, 489949\).](#)

⁷³ [Judgment by the Council of State, of 30 December 2024, \(No. 489906, ECLI:FR:CECHR:2024:489906.20241230\)](#)

European Parliament and of the Council, and the strictest national measures that the member States may adopt for such purpose in their territorial waters in accordance with Regulation (EU) 2019/1241".

Indeed, Article 11 of Regulation (EU) 2019/1241 on technical measures, assigns authority to member States to implement mitigation measures or restrictions on the use of certain fishing gear in order to reduce to a minimum, and whenever possible, to eliminate the capture of marine mammals, marine birds and marine reptiles mentioned in Annexes II and IV of the Habitats Directive, and marine bird species covered by the Birds Directive, which “*must be compatible with the objectives established in Article 2 of Regulation (EU) 1380/2013, and shall be at least as strict as the applicable technical measures in view of Union Law*”. In other words, the terms of this authority are practically identical to those considered in Article 11 of Regulation (EU) 1380/2013 regarding the adoption of necessary conservation measures to comply with paragraph 4 of Article 13 of the Marine Strategy Framework Directive, Article 4 of the Birds Directive and Article 6 of the Habitats Directive⁷⁴.

Accordingly, the aforementioned case law of the CJEU and the national judicial bodies such as the Council of State of France, confirm that restrictions on fishing activities ruled by member States for effective compliance with the Habitats Directive and the Birds Directive within the framework of CFP rules respond to the objectives of Article 2 of Regulation (EU) 1380/2013, without such involving the obligation of conducting a specific weighting regarding protection of the marine environment and the interests of persons who perform fishing activities and the socio-economic aspects of such activities. The foregoing is without prejudice to any considerations that could be taken into account whenever integration is possible, with the adopted measures that “*comply with the relevant legislation of the Union to be applied*” prevailing in all cases.

* * * * *

This document was prepared by Fundación ClientEarth Delegación en España in collaboration with the law firm LegalNatura. The content of this document does not comprise legal advice. The content of this document is for information purposes only. Specialist legal advice should be sought in relation to specific circumstances. Despite the efforts made to ensure that the provided information is correct, no express or implied guarantee is granted regarding the precision or exactness.

Beijing Berlin Brussels London Los Angeles Luxembourg Madrid Tokyo Warsaw

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office The Joinery, 34 Drayton Park, London, N5 1PB, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a non-profit limited liability company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered foundation in Poland, Fundacja “ClientEarth Prawnicy dla Ziemi”, KRS 0000364218, NIP 7010254208, a registered delegation in Spain, Fundación ClientEarth Delegación en España, NIF W0170741C, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836, a registered subsidiary in Japan, Ippan Shadan Hojin ClientEarth, corporate number 6010405022079, a registered subsidiary and company limited by guarantee in Australia, ClientEarth Oceania Limited, company number 664010655.

⁷⁴ See also the European Commission's Guide [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, page 43.