



Council of the
European Union

114394/EU XXV. GP
Eingelangt am 07/09/16

Brussels, 7 September 2016
(OR. en)

11990/16

PECHE 305
DELECT 183

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 September 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2016) 5562 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 5.9.2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Regulation (EU) 2015/1778

Delegations will find attached document C(2016) 5562 final.

Encl.: C(2016) 5562 final



EUROPEAN
COMMISSION

Brussels, 5.9.2016
C(2016) 5562 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.9.2016

**establishing fisheries conservation measures for the protection of the marine
environment in the Baltic Sea and repealing Regulation (EU) 2015/1778**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under the Common Fisheries Policy (CFP) fisheries management measures may be adopted for the purpose of compliance with environmental legislation (see Article 11 of Regulation (EU) No 1380/2013¹).

In accordance with the relevant provisions of EU Nature directives (Habitats² and Birds³ Directives) Member States are obliged to designate respectively Special Areas of Conservation and Special Protection Areas in order to protect habitats and species of Community interest. These areas form a European ecological network under the title Natura 2000. For these sites Member States have to establish the necessary conservation measures and take appropriate steps for the protection of the natural habitats and species for which the sites have been designated. Such measures shall correspond to the ecological requirements of the natural habitats and species present on the site, and may include measures related to fisheries. If Member States find that certain fisheries conservation measures are required for the protection of those species or habitats, those measures have to be adopted in accordance with the rules of the CFP, a policy falling under the exclusive competence of the EU.

The Natura 2000 sites concerned by this proposal have been designated by Denmark for the protection, inter alia, of reef habitats (1170 reefs). This type of marine habitats is threatened by direct physical disturbances and high nutrient content in the water column. The conservation status of these habitat types in Danish territorial waters of the Western Baltic, Kattegat, Skagerrak and the North Sea is assessed as unfavourable.

In December 2011, nature management plans were adopted for the sites designated before 2010⁴, and the sites were also designated as Special Areas of Conservation (SACs). In accordance with the Habitats Directive, the necessary conservation measures must be established for those sites.

The overall aim of the Regulation is to ensure that fisheries measures under the CFP adequately contribute to the protection of reef structures, and therewith to the obligation of achieving favourable conservation status for these habitat types, in accordance with Article 6 of the Habitats Directive.

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22–61)

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7)

⁴ Danish Administrative order no. 1114, 25 November 2011:
<https://www.retsinformation.dk/Forms/R0710.aspx?id=139270>

Fishing activity with mobile bottom contacting gear is identified as threat to reefs. Therefore it is proposed to prohibit such activities in areas mapped as reefs.

Scientific advice from Aarhus University (Danish Centre for Environment and Energy), the Danish Technical University (Institute for Aquatic Resources) and International Council for the Exploration of the Sea (ICES)⁵ alongside the site-specific management plans and mapping of marine habitats, serve as the basis for the fishery management measures in this Regulation.

Sweden and Germany have fishing rights in the Danish territorial waters in the Baltic Sea. These are important fishing areas for both Denmark and Sweden. However, analysis of fishery data show, that the fisheries conservation measures will have no or limited impact on Danish and Swedish fishing activity because in general, fishing activity does not take place in reefs in these areas. During the last years virtually no German vessels have been registered as fishing in these areas. Nonetheless, these measures are necessary to prevent fishermen from changing their fishing patterns.

When evaluating the practical implementation and enforcement of the proposed measures, it was found that, with the current fishing activity in mind, the existing fisheries control measures laid down in Regulation 1224/2009 are sufficient to ensure compliance with the fishing prohibitions. Having said that, it is planned to reassess the control system once the measures have been in place for 18 months.

A key innovation of the CFP is the introduction of provisions on regional cooperation between Member States having direct management interest in certain fisheries or areas.

In accordance with Article 18 of Regulation 1380/2013, the proposal is based on the joint recommendation (JR) elaborated and submitted to the Commission by the Member States concerned.

- (1) To this end, Delegated Regulation (EU) 2015/1778⁶ was adopted on the basis of joint recommendations submitted by Denmark, Germany and Sweden in March 2015.
- (2) On 10 June 2016 another joint recommendation, relating to fisheries conservation measures for Bratten area located in Skagerrak (North Sea) in accordance with Article 11 of Regulation 1380/2013 was submitted by Sweden, Denmark and Germany, and a number of similar joint recommendations are being prepared by the Member States concerned. For legal clarity and consistency, it is appropriate to combine all fisheries conservation measures adopted for compliance with environmental obligations applicable in a sea basin in one regulation, namely one regulation for the Baltic Sea and another for the North Sea. Accordingly, Regulation (EU) 2015/1778 should be repealed and its provisions split into two regulations.

⁵ Reference to be completed later

⁶ Commission Delegated Regulation (EU) 2015/1778 of 25 June 2015 establishing fisheries conservation measures to protect reef zones in waters under the sovereignty of Denmark in the Baltic Sea and Kattegat (OJ L 259, 6.10.2015, p. 5)

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Stakeholder consultations

Since spring 2011 the Danish authorities held formal and informal consultations with various stakeholders both within and outside Denmark.

In Denmark, national coordination with stakeholders took place in the ‘Natura 2000 Dialogue Forum’ involving green NGO’s, fishermen organizations, Ministry of Environment and research institutes. The fisheries management measures in this Regulation were discussed in the forum at seven meetings between March 2011 and December 2014.

Several additional meetings were organised with the Danish Fishermen Organization and DTU Aqua, and an informal meeting with WWF Denmark.

Internationally, a pre-consultation meeting was held in March 2012 in Copenhagen with German and Swedish authorities, the Baltic Sea Advisory Council, ICES, DTU Aqua, Danish Ministry of Environment and the European Commission. The proposal has been discussed with Sweden and Germany in ad hoc working groups comprising of representatives from fisheries and environmental departments.

Joint recommendations

In accordance with the procedure described in Article 18 of Regulation (EU) No1380/2013, the joint recommendation (JR) is the result of discussions between the Member States having a direct management interest.

For the purpose of implementing the regionalised approach the Member States around the Baltic Sea established a regional Baltic Sea Fisheries Forum (BALTFISH).

During the period June-December 2014 representatives from both fishery and environmental departments of DK, SE and DE drafted the final version of the joint recommendations. This was signed by all Member States having direct management interest on 10 March 2015 and submitted to the Commission on 13 March 2015. BALTFISH also submitted the joint recommendation on 24 March 2015.

The joint recommendation target seven Natura 2000 sites in the Danish part of the Baltic Sea. The sites are designated for reef structures. For the protection of these structures it is foreseen that fishing with bottom contacting gear be prohibited in reef areas. A revision of the monitoring and control of the implementation of the measures is proposed after 18 months from the entry into force of those measures.

Scientific, Technical and Economic Committee for Fisheries (STECF)

The main elements of the final joint JR submitted to the Commission were evaluated by the STECF during its plenary meeting of 13-17 April 2015.

On the specific elements STECF concluded that⁷

⁷ http://stecf.jrc.ec.europa.eu/documents/43805/991908/STECF-PLN-15-01_JRCxxx.pdf

1. the proposed conservation measures, which relate to 7 of the 55 currently unprotected Danish Natura 2000 sites where reefs are present, is a step forwards to minimise the negative impacts of fishing activities on the marine ecosystem and ensure that fisheries activities avoid the degradation of the marine environment as stipulated under Article 2(3) of Regulation 1380/2013.

2. the proposed measures contribute towards ensuring that the habitats of Community interest addressed in the recommendation are maintained and restored at favourable conservation status inside the delineated areas as stipulated under Article 2 of Directive 92/43/EEC.

3. that although the current catch inside the Natura 2000 sites under consideration seems to be limited, some fishing activity is present especially by passive gears in at least one area where bubbling reef have been identified. Thus, STECF considers that the conservation objectives within the SACs referred to in the joint recommendation cannot be fully achieved without appropriate measures to prevent fishing activity in the areas. STECF identifies some issues regarding the controllability of the sites. STECF considers that for effective implementation of the measures, the Danish control system that alerts authorities when vessels enter the control area should be extended to all fishing vessels equipped with VMS operating in proximity to the areas. Furthermore, STECF considers that additional measures may be appropriate for fishing vessels without VMS systems (e.g. <12m). These measures should be introduced at the same time as the implementation of the closed areas.

On the basis of the evaluation by STECF and internal assessment by Commission services, the Commission considers that the JR submitted is in line with Article 11 of Regulation (EU) No 1380/2013 as outlined above.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

The main legal action is to adopt measures that would be necessary to comply with obligations under Union environmental law.

The regulation specifies the fisheries in certain areas to which specific measures would apply.

Legal basis

Articles 11(2) and 18(1) and (3) of Regulation of the European Parliament and of the Council (EU) No 1380/2013

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union.

Proportionality principle

The proposal is within the scope of the delegated powers provided to the Commission by Article 11(2) of Regulation (EU) No 1380/2013 and does not go beyond what is necessary to achieve the purpose of that provision.

Choice of instrument

Proposed instrument: Commission Delegated Regulation.

Other means would not be adequate for the following reason: The Commission has been granted powers to adopt fisheries conservation measures necessary for compliance with obligations under Union environmental law by means of delegated acts. Member States having a direct management interest submitted their joint recommendation. Measures provided in the joint recommendation and included in this proposal are based on the best available scientific advice and fulfil all the relevant requirements set out in Article 11 of Regulation (EU) No 1380/2013.

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.9.2016

establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Regulation (EU) 2015/1778

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC⁸, and in particular Article 11(2) thereof,

Whereas:

- (1) Pursuant to Article 11 of Regulation (EU) No 1380/2013, fisheries conservation measures may be adopted that are necessary for the purpose of complying with their obligations under Union environmental legislation, including Article 6 of Council Directive 92/43/EEC⁹.
- (2) Article 6 of Council Directive 92/43/EEC¹⁰ requires Member States to establish the necessary conservation measures for Special Areas of Conservation that correspond to the ecological requirements of natural habitat types and species present on the sites. It also requires Member States to take appropriate steps to avoid, in the Special Areas of Conservation, the deterioration of natural habitats and the habitats of species as well as significant disturbance of the species for which the areas have been designated.
- (3) Denmark considered that, for the purpose of complying with Article 6 of Directive 92/43/EEC, conservation measures needed to be adopted in certain areas under its sovereignty in the Baltic Sea. If necessary fisheries conservation measures affect the fishery of other Member States, the Member States may submit these measures in joint recommendations to the Commission.
- (4) Germany and Sweden have a direct management interest in the fishery to be affected by such measures. In accordance with Article 11(3) of Regulation (EU) No 1380/2013,

⁸ [OJ L 354, 28.12.2013, p. 22](#)

⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([OJ L 206, 22.7.1992, p. 7](#))

¹⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([OJ L 206, 22.7.1992, p. 7](#))

Denmark provided Germany and Sweden with relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement.

- (5) On 13 March 2015 Denmark, Germany and Sweden submitted to the Commission a joint recommendation for fisheries conservation measures to protect reef structures in Danish Natura 2000 sites in the Baltic Sea. This recommendation was submitted after having consulted the Baltic Sea Advisory Council.
- (6) The recommended measures concerned seven Natura 2000 sites in the Baltic Sea. They comprised the prohibition of fishing activities with mobile bottom contacting gear in reef zones.
- (7) In its scientific advice, the Scientific, Technical and Economic Committee on Fisheries ('STECF')¹¹ stated on 17 April 2015 that the conservation objectives within the Special Areas of Conservation referred to in the joint recommendation could not be fully achieved without appropriate measures to prevent fishing activity in the areas.
- (8) STECF identified some concerns as regards the control and enforcement of the conservation measures and considered that additional control measures may be appropriate. In accordance with Article 5 of Council Regulation (EC) No 1224/2009¹² Member States are required to adopt appropriate measures, allocate adequate resources and set up the structures necessary for ensuring control, inspection and enforcement of activities carried out within the scope of the common fisheries policy (CFP). This may include measures such as the requirement of submitting vessels monitoring systems (VMS) positions with increased frequency by all vessels concerned or identifying the areas as high risk in the national control system based on risk management, addressing the concerns of STECF.
- (9) On 25 June 2015, the Commission adopted Delegated Regulation (EU) 2015/1778¹³ in order to establish fisheries conservation measures for the protection of the relevant reef zones in the Baltic Sea and the Kattegat, North Sea, on the basis of two joint recommendations submitted by the Member States concerned.
- (10) Fishing activity with mobile bottom contacting gear has a negative impact on reef habitats, as such activity affects both the reef structures and the biodiversity found at the reefs. Therefore the prohibition to fish with such gears in the relevant reef areas, as set out in the joint recommendations, was included in that Regulation.

¹¹ http://stecf.jrc.ec.europa.eu/documents/43805/991908/STECF-PLN-15-01_JRCxxx.pdf

¹² Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1)

¹³ OJ L 259, 6.10.2015, p. 5

- (11) It was appropriate to ensure the assessment of the measures established by that Regulation, in particular as regards the control of compliance with fishing prohibitions.
- (12) On 10 June 2016, having consulted the North Sea Advisory Council, Denmark, Germany and Sweden submitted to the Commission a joint recommendation for fisheries conservation measures to protect reef structures, pockmarks and sea-pen and burrowing megafauna communities in the Bratten area located in the Skagerrak (North Sea).
- (13) Following that new joint recommendation, it is appropriate to repeal Delegated Regulation (EU) 2015/1778 and to rearrange the conservation measures by sea basin into two different legal instruments.
- (14) This Regulation should only comprise the conservation fisheries measures which are currently applicable in the Baltic Sea.
- (15) The conservation measures which are currently applicable in the Kattegat and those suggested for the Bratten area (Skagerrak) by the joint recommendation of 10 June 2016 should be included in a new separate Regulation concerning the North Sea.
- (16) The fisheries conservation measures established by this Regulation are without prejudice to any other existing or future management measures aiming at the conservation of the sites concerned, including fisheries conservation measures,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

- 1. This Regulation establishes fisheries conservation measures necessary for compliance with obligations under Article 6 of Directive 92/43/EEC.
- 2. This Regulation applies to fishing vessels in the Baltic Sea.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those laid down in Article 4 of Regulation (EU) No 1380/2013 and Article 2 of Commission Implementing Regulation (EU) No 404/2011¹⁴:

¹⁴ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p.1)

(a) 'bottom contacting gear' means any of the following gear: bottom trawl, beam trawl, bottom otter trawl, otter twin trawl, bottom pair trawl, nephrops trawl, shrimp trawl, seine net, Danish anchor seine, Scottish seine, boat or vessel seine and dredge;

(b) 'restricted areas' mean the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in the Annex to this Regulation, which shall be measured according to the WGS84 coordinate system.

(c) "Member States concerned" means Denmark, Germany and Sweden.

Article 3

Fishing prohibition

1. It shall be prohibited to carry out any fishing activity with bottom contacting gear in the restricted areas.
2. Fishing vessels carrying on board any bottom contacting gear may carry out fishing activities in the restricted areas with gears other than those gears, provided that the bottom contacting gears be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation (EC) No 1224/2009.

Article 4

Transit

Fishing vessels carrying on board any bottom contacting gear may transit across the restricted areas, provided that the bottom contacting gears be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation (EC) No 1224/2009.

Article 5

Review

1. Member States concerned shall assess the implementation of the measures set out in Article 3 and 4 by 30 June 2017, including the control of compliance with the fishing prohibitions.
2. Member States concerned shall submit a summary report of the review to the Commission by 31 July 2017.

Article 6

Repeal

Regulation (EU) 2015/1778 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and Regulation (EU) XXX [NS fisheries conservation measures for environment] as appropriate.

Article 7

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5.9.2016

For the Commission
The President
Jean-Claude JUNCKER