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Delegations will find attached document D046061/03.

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Brussels, **XXX**
[...] (2016) **XXX** draft

COMMISSION DECISION (EU) .../...

of XXX

**laying down criteria and methodological standards on good environmental status of
marine waters and specifications and standardised methods for monitoring and
assessment, and repealing Decision 2010/477/EU**

(Text with EEA relevance)

COMMISSION DECISION (EU) .../...**of XXX****laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)¹, and in particular Articles 9(3) and 11(4) thereof,

Whereas:

- (1) Commission Decision 2010/477/EU² established criteria to be used by the Member States to determine the good environmental status of their marine waters and to guide their assessments of that status in the first implementation cycle of Directive 2008/56/EC.
- (2) Decision 2010/477/EU acknowledged that additional scientific and technical progress was required to support the development or revision of those criteria for some qualitative descriptors, as well as further development of methodological standards in close coordination with the establishment of monitoring programmes. In addition, that Decision stated that it would be appropriate to carry out its revision as soon as possible after the completion of the assessment required under Article 12 of Directive 2008/56/EC, in time to support a successful update of marine strategies that are due by 2018, pursuant to Article 17 of Directive 2008/56/EC.
- (3) In 2012, on the basis of the initial assessment of their marine waters made pursuant to Article 8(1) of Directive 2008/56/EC, Member States reported on the environmental status of their marine waters and notified to the Commission their determination of good environmental status and their environmental targets in accordance with Articles

¹ OJ L 164, 25.6.2008, p. 19.

² Commission Decision 2010/477/EU of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters (OJ L 232, 2.9.2010, p. 14).

9(2) and 10(2) of Directive 2008/56/EC, respectively. The Commission's assessment³ of those Member State reports, undertaken in accordance with Article 12 of Directive 2008/56/EC, highlighted that more efforts were urgently needed if Member States are to reach good environmental status by 2020. The results showed the necessity to significantly improve the quality and coherence of the determination of good environmental status by the Member States. In addition, the assessment recognised that regional cooperation must be at the very heart of the implementation of Directive 2008/56/EC. It also emphasised the need for Member States to more systematically build upon standards stemming from Union legislation or, where they do not exist, upon standards set by Regional Sea Conventions or other international agreements.

- (4) To ensure that the second cycle of implementation of the marine strategies of the Member States further contributes to the achievement of the objectives of Directive 2008/56/EC and yields more consistent determinations of good environmental status, the Commission recommended in its report on the first phase of implementation that, at Union level, the Commission services and Member States collaborate to revise, strengthen and improve Decision 2010/477/EU, aiming at a clearer, simpler, more concise, more coherent and comparable set of good environmental status criteria and methodological standards and, at the same time, review Annex III of Directive 2008/56/EC, and if necessary revise it, and develop specific guidance to ensure a more coherent and consistent approach for assessments in the next implementation cycle.
- (5) On the basis of those conclusions, the review process started in 2013 when a roadmap, consisting of several phases (technical and scientific, consultation, and decision-making), was endorsed by the Regulatory Committee established under Article 25(1) of Directive 2008/56/EC. During this process, the Commission consulted all interested parties, including Regional Sea Conventions.
- (6) In order to facilitate future updates of the initial assessment of Member States' marine waters and their determination of good environmental status, and to ensure greater coherence in implementation of Directive 2008/56/EC across the Union, it is necessary to clarify, revise or introduce criteria, methodological standards, specifications and standardised methods to be used by Member States, compared to the elements currently set out in Decision 2010/477/EU. As a result, the number of criteria that Member States need to monitor and assess should be reduced, applying a risk-based approach to those which are retained in order to allow Member States to focus their efforts on the main anthropogenic pressures affecting their waters. Finally, the criteria and their use should be further specified, including providing for threshold values or the setting thereof, thereby allowing for the extent to which good environmental status is achieved to be measured across the Union's marine waters.
- (7) In accordance with the commitment taken by the Commission when adopting its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results — An EU agenda⁴, this Decision should ensure coherence with other Union legislation. To ensure greater consistency and comparability at Union level of Member

³ Report from the Commission to the Council and the European Parliament - The first phase of implementation of the Marine Strategy Framework Directive (2008/56/EC) - The European Commission's assessment and guidance (COM(2014)097 final, 20.2.2014).

⁴ COM(2015) 215 final.

States' determinations of good environmental status and avoid unnecessary overlaps, it is appropriate to take into account relevant existing standards and methods for monitoring and assessment laid down in Union legislation, including Council Directive 92/43/EEC⁵, Directive 2000/60/EC of the European Parliament and of the Council⁶, Commission Regulation (EC) No 1881/2006⁷, Council Regulation (EC) No 1967/2006⁸, Directive 2008/105/EC of the European Parliament and of the Council⁹, Directive 2009/147/EC of the European Parliament and of the Council¹⁰ and Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹¹.

- (8) For each of the qualitative descriptors listed in Annex I to Directive 2008/56/EC, and on the basis of the indicative lists in Annex III to that Directive, it is necessary to define the criteria, including the criteria elements and, where appropriate, the threshold values, to be used. Threshold values are intended to contribute to Member States' determination of a set of characteristics for good environmental status and inform their assessment of the extent to which good environmental status is being achieved. It is also necessary to set out methodological standards, including the geographic scales for assessment and how the criteria should be used. Those criteria and methodological standards are to ensure consistency and allow for comparison, between marine regions or subregions, of assessments of the extent to which good environmental status is being achieved.
- (9) To ensure comparability between the details of any updates by the Member States following the reviews of certain elements of their marine strategies, sent under Article 17(3) of Directive 2008/56/EC, specifications and standardised methods for monitoring and assessment should be defined, taking into account existing specifications and standards at Union or international level, including regional or subregional level.
- (10) Member States should apply the criteria, methodological standards, specifications and standardised methods for monitoring and assessment laid down in this Decision in combination with the ecosystem elements, anthropogenic pressures and human activities listed in the indicative lists of Annex III to Directive 2008/56/EC and by reference to the initial assessment made pursuant to Article 8(1) of that Directive,

⁵ 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).

⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁷ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

⁸ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11).

⁹ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently replacing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84.).

¹⁰ 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).

¹¹ 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).

when determining a set of characteristics for good environmental status in accordance with Article 9(1) of that Directive, and when establishing coordinated monitoring programmes under Article 11 of that Directive.

- (11) In order to establish a clear link between the determination of a set of characteristics for good environmental status and the assessment of progress towards its achievement, it is appropriate to organise the criteria and methodological standards on the basis of the qualitative descriptors laid down in Annex I to Directive 2008/56/EC, taking into account the indicative lists of ecosystem elements, anthropogenic pressures and human activities laid down in Annex III to that Directive. Some of those criteria and methodological standards relate in particular to the assessment of environmental status or of predominant pressures and impacts under points (a) or (b) of Article 8(1) of Directive 2008/56/EC, respectively.
- (12) In cases where no threshold values are laid down, Member States should establish threshold values through Union, regional or subregional cooperation, for instance by referring to existing values or developing new ones in the framework of the Regional Sea Conventions. In cases where threshold values should be established through cooperation at Union level (for the descriptors on marine litter, underwater noise and seabed integrity), this will be done in the framework of the Common Implementation Strategy set up by the Member States and the Commission for the purposes of Directive 2008/56/EC. Once established through Union, regional or subregional cooperation, these threshold values will only become part of Member States' sets of characteristics for good environmental status when they are sent to the Commission as part of Member States' reporting under Article 17(3) of Directive 2008/56/EC. Until such threshold values are established through Union, regional or subregional cooperation, Member States should be able to use national threshold values, directional trends or pressure-based threshold values as proxies.
- (13) Threshold values should reflect, where appropriate, the quality level that reflects the significance of an adverse effect for a criterion and should be set in relation to a reference condition. Threshold values should be consistent with Union legislation and set at appropriate geographic scales to reflect the different biotic and abiotic characteristics of the regions, subregions and subdivisions. This means that even if the process to establish threshold values takes place at Union level, this may result in the setting of different threshold values, which are specific to a region, subregion or subdivision. Threshold values should also be set on the basis of the precautionary principle, reflecting the potential risks to the marine environment. The setting of threshold values should accommodate the dynamic nature of marine ecosystems and their elements, which can change in space and time through hydrological and climatic variation, predator-prey relationships and other environmental factors. Threshold values should also reflect the fact that marine ecosystems may recover, if deteriorated, to a state that reflects prevailing physiographic, geographic, climatic and biological conditions, rather than return to a specific state of the past.
- (14) In accordance with Article 1(3) of Directive 2008/56/EC, the collective pressure of human activities needs to be kept within levels compatible with the achievement of good environmental status, ensuring that the capacity of marine ecosystems to respond to human-induced changes is not compromised. This may entail, where appropriate, that threshold values for certain pressures and their environmental impacts are not necessarily achieved in all areas of Member States' marine waters, provided that this

does not compromise the achievement of the objectives of Directive 2008/56/EC, while enabling the sustainable use of marine goods and services.

- (15) It is necessary to lay down threshold values which will be part of the set of characteristics used by Member States in their determination of good environmental status in accordance with Article 9(1) of Directive 2008/56/EC, and the extent to which the threshold values are to be achieved. Threshold values therefore do not, by themselves, constitute Member States' determinations of good environmental status.
- (16) Member States should express the extent to which good environmental status is being achieved as the proportion of their marine waters over which the threshold values have been achieved or as the proportion of criteria elements (species, contaminants, etc.) that have achieved the threshold values. When assessing the status of their marine waters in accordance with Article 17(2)(a) of Directive 2008/56/EC, Member States should express any change in status as improving, stable or deteriorating compared to the previous reporting period, in view of the often slow response of the marine environment to change.
- (17) Where threshold values, set in accordance with this Decision, are not met for a particular criterion, Member States should consider taking appropriate measures or carrying out further research or investigation.
- (18) Where Member States are required to cooperate at regional or subregional level, they should use, where practical and appropriate, existing regional institutional cooperation structures, including those under Regional Sea Conventions, as provided under Article 6 of Directive 2008/56/EC. Similarly, in the absence of specific criteria, methodological standards, including for integration of the criteria, specifications and standardised methods for monitoring and assessment, Member States should build upon, where practical and appropriate, those developed at international, regional or subregional level, for instance those agreed in the framework of the Regional Sea Conventions, or other international mechanisms. Otherwise, Member States may choose to coordinate amongst themselves within the region or subregion, where relevant. In addition, a Member State may also decide, on the basis of the specificities of its marine waters, to consider additional elements not laid down in this Decision and not dealt with at international, regional or subregional level, or to consider applying elements of this Decision to its transitional waters, as defined in Article 2(6) of Directive 2000/60/EC, in support of the implementation of Directive 2008/56/EC.
- (19) Member States should have sufficient flexibility, under specified conditions, to focus on the predominant pressures and their environmental impacts on the different ecosystem elements in each region or subregion in order to monitor and assess their marine waters in an efficient and effective manner and to facilitate prioritisation of actions to be taken to achieve good environmental status. For that purpose, firstly, Member States should be able to consider that some of the criteria are not appropriate to apply, provided this is justified. Secondly, Member States should have the possibility to decide not to use certain criteria elements or to select additional elements or to focus on certain matrices or areas of their marine waters, provided that this is based on a risk assessment in relation to the pressures and their impacts. Finally, a distinction should be introduced between primary and secondary criteria. While primary criteria should be used to ensure consistency across the Union, flexibility should be granted with regard to secondary criteria. The use of a secondary criterion

should be decided by Member States, where necessary, to complement a primary criterion or when, for a particular criterion, the marine environment is at risk of not achieving or not maintaining good environmental status.

- (20) Criteria, including threshold values, methodological standards, specifications and standardised methods for monitoring and assessment should be based on the best available science. However, additional scientific and technical progress is still required to support the further development of some of them, and should be used as the knowledge and understanding become available.
- (21) Decision 2010/477/EU should therefore be repealed.
- (22) The measures provided for in this Decision are in accordance with the opinion of the Regulatory Committee,

HAS ADOPTED THIS DECISION:

Article 1
Subject-matter

This Decision lays down:

- (a) criteria and methodological standards to be used by Member States when determining a set of characteristics for good environmental status in accordance with Article 9(1) of Directive 2008/56/EC, on the basis of Annexes I and III and by reference to the initial assessment made pursuant to Article 8(1) of that Directive, to assess the extent to which good environmental status is being achieved, in accordance with Article 9(3) of that Directive;
- (b) specifications and standardised methods for monitoring and assessment, to be used by Member States when establishing coordinated monitoring programmes under Article 11 of Directive 2008/56/EC, in accordance with Article 11(4) of that Directive;
- (c) a timeline for the establishment of threshold values, lists of criteria elements and methodological standards through Union, regional or subregional cooperation;
- (d) a notification requirement for criteria elements, threshold values and methodological standards.

Article 2
Definitions

For the purposes of this Decision, the definitions laid down in Article 3 of Directive 2008/56/EC shall apply.

The following definitions shall also apply:

- (1) 'subregions' means the subregions listed in Article 4(2) of Directive 2008/56/EC;

- (2) 'subdivisions' means subdivisions as referred to in Article 4(2) of Directive 2008/56/EC;
- (3) 'invasive non-indigenous species' means 'invasive alien species' within the meaning of Article 3(2) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council¹²;
- (4) 'criteria elements' means constituent elements of an ecosystem, particularly its biological elements (species, habitats and their communities), or aspects of pressures on the marine environment (biological, physical, substances, litter and energy), which are assessed under each criterion;
- (5) 'threshold value' means a value or range of values that allows for an assessment of the quality level achieved for a particular criterion, thereby contributing to the assessment of the extent to which good environmental status is being achieved.

Article 3

Use of criteria, methodological standards, specifications and standardised methods

1. Member States shall use primary criteria and associated methodological standards, specifications and standardised methods laid down in the Annex to implement this Decision. However, on the basis of the initial assessment or its subsequent updates carried out in accordance with Articles 8 and 17(2)(a) of Directive 2008/56/EC, Member States may consider, in justified circumstances, that it is not appropriate to use one or more of the primary criteria. In such cases, Member States shall provide the Commission with a justification in the framework of the notification made pursuant to Article 9(2) or 17(3) of Directive 2008/56/EC.

Pursuant to the obligation of regional cooperation laid down in Articles 5 and 6 of Directive 2008/56/EC, a Member State shall inform other Member States sharing the same marine region or subregion before it decides not to use a primary criterion in accordance with the first subparagraph.

2. Secondary criteria and associated methodological standards, specifications and standardised methods laid down in the Annex shall be used to complement a primary criterion or when the marine environment is at risk of not achieving or not maintaining good environmental status for that particular criterion. The use of a secondary criterion shall be decided by each Member State, except where otherwise specified in the Annex.
3. Where this Decision does not set criteria, methodological standards, specifications or standardised methods for monitoring and assessment, including for spatial and temporal aggregation of data, Member States shall build upon, where practical and appropriate, those developed at international, regional or subregional level, such as those agreed in the relevant Regional Sea Conventions.

¹² Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

4. Until Union, international, regional or subregional lists of criteria elements, methodological standards, and specifications and standardised methods for monitoring and assessment are established, Member States may use those established at national level, provided that regional cooperation is pursued as laid down in Articles 5 and 6 of Directive 2008/56/EC.

Article 4

Setting of threshold values through Union, regional or subregional cooperation

1. Where Member States are required under this Decision to establish threshold values through Union, regional or subregional cooperation, those values shall:
 - (a) be part of the set of characteristics used by Member States in their determination of good environmental status;
 - (b) be consistent with Union legislation;
 - (c) where appropriate, distinguish the quality level that reflects the significance of an adverse effect for a criterion and be set in relation to a reference condition;
 - (d) be set at appropriate geographic scales of assessment to reflect the different biotic and abiotic characteristics of the regions, subregions and subdivisions;
 - (e) be set on the basis of the precautionary principle, reflecting the potential risks to the marine environment;
 - (f) be consistent across different criteria when they relate to the same ecosystem element;
 - (g) make use of best available science;
 - (h) be based on long time-series data, where available, to help determine the most appropriate value;
 - (i) reflect natural ecosystem dynamics, including predator-prey relationships and hydrological and climatic variation, also acknowledging that the ecosystem or parts thereof may recover, if deteriorated, to a state that reflects prevailing physiographic, geographic, climatic and biological conditions, rather than return to a specific state of the past;
 - (j) be consistent, where practical and appropriate, with relevant values set under regional institutional cooperation structures, including those agreed in the Regional Sea Conventions.

2. Until Member States have established threshold values through Union, regional or subregional cooperation as required under this Decision, they may use any of the following to express the extent to which good environmental status is being achieved:
 - (a) national threshold values, provided the obligation of regional cooperation laid down in Articles 5 and 6 of Directive 2008/56/EC is complied with;

- (b) directional trends of the values;
- (c) pressure-based threshold values as proxies.

These shall follow, where possible, the principles set out in points (a) to (i) of paragraph 1.

3. Where threshold values, including those established by Member States in accordance with this Decision, are not met for a particular criterion to the extent which that Member State has determined as constituting good environmental status in accordance with Article 9(1) of Directive 2008/56/EC, Member States shall consider, as appropriate, whether measures should be taken under Article 13 of that Directive or whether further research or investigation should be carried out.
4. Threshold values established by Member States in accordance with this Decision may be periodically reviewed in the light of scientific and technical progress and amended, where necessary, in time for the reviews provided for in Article 17(2)(a) of Directive 2008/56/EC.

Article 5 *Timeline*

1. Where this Decision provides for Member States to establish threshold values, lists of criteria elements or methodological standards through Union, regional or subregional cooperation, Member States shall endeavour to do so within the time-limit set for the first review of their initial assessment and determination of good environmental status in accordance with Article 17(2)(a) of Directive 2008/56/EC (15 July 2018).
2. Where Member States are not able to establish threshold values, lists of criteria elements or methodological standards through Union, regional or subregional cooperation within the time-limit laid down in paragraph 1, they shall establish these as soon as possible thereafter, on condition that they provide, by 15 October 2018, justification to the Commission in the notification made pursuant to Article 9(2) or 17(3) of Directive 2008/56/EC.

Article 6 *Notification*

Each Member State shall send to the Commission, as part of the notification made pursuant to Article 17(3) of Directive 2008/56/EC, those criteria elements, threshold values and methodological standards established through Union, regional or subregional cooperation in accordance with this Decision, that it decides to use as part of its set of characteristics for determining good environmental status under Article 9(1) of Directive 2008/56/EC.

Article 7 *Repeal*

Decision 2010/477/EU is hereby repealed.

References to Decision 2010/477/EU shall be construed as references to this Decision.

Article 8
Entry into force

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

Done at Brussels,

For the Commission
The President