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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 24.2.2017 amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea

Delegations will find attached document C(2017) 1162 final.

Encl.: C(2017) 1162 final



Brussels, 24.2.2017
C(2017) 1162 final

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

of 24.2.2017

**amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation
measures for the protection of the marine environment in the North Sea**

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 as laid down in 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.

Pursuant 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)⁴ Member States are to take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest. For that purpose, Article 13(4) of the Directive requires Member States to establish Programmes of measures including spatial protection measures contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems.

If Member States find that certain fisheries conservation measures are required to comply with their obligations under Article 13(4) of the Marine Strategy Framework Directive, Article 4 of the Birds Directive or Article 6 of the Habitats Directive, those measures have to be adopted in accordance with the rules of the CFP, a policy falling under the exclusive competence of the EU.

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 (EU) No 1380/2013, the proposal is based on the joint recommendations (JR) elaborated and submitted to the Commission by the Member States concerned.

On 16 November 2016 Denmark, Sweden and Germany submitted to the Commission a joint recommendation, relating to fisheries conservation measures for protection of reef structures in

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 OJ L 164, 25.6.2008, p. 19

four Natura 2000 sites in the Danish part of the Kattegat, North Sea. Consequently, an amendment to Commission Delegated Regulation (EU) 2017/118 of 5 September 2016⁵ has been drafted.

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.

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. In areas mapped as "bubbling reefs", a total commercial fishing ban is proposed because the use of any net may damage those structures. These reef structures should be protected from impact from fishing activity by delineating buffer zones around reef structures.

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) 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 Kattegat. These are important fishing areas for both Denmark and Sweden. However, analysis of fishery data show, that the 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. This however, should not justify postponing or failing to take necessary conservation measures since this type of fisheries could occur in the future.

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 (EC) No 1224/2009 are sufficient to ensure compliance with the fishing prohibitions.

Denmark provided detailed information on the measures ensuring monitoring and control taking account the current level of fishing activity in these areas. These control measures involve sea going fisheries inspections monitored 24/7 by the Danish fisheries monitoring centre through the risk based management system, also automatic identification system is used to supplement VMS data. Monitoring takes place through the Danish Monitoring program NOVANA.

Moreover, it is planned to reassess the control system once the measures have been in place for 18 months.

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.

⁵ OJ L 19, 25.1.2017, p. 10

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 six meetings between March 2011 and May 2016.

Several additional meetings were organised with the Danish Fishermen's Association.

Internationally, a pre-consultation meeting was held in March 2012 in Copenhagen with German and Swedish authorities, the North Sea Advisory Council, 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.

Since Denmark and Sweden have designated Natura 2000 sites in Kattegat adjacent to each other – bilateral meetings have also taken place in Copenhagen and Gothenburg in 2011 and 2013 for further discussions. In addition to that, in 2015 a meeting was held with representatives from Poland.

Joint recommendations

In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, the joint recommendation (JR) is the result of discussions between the Member States having a direct management interest.

In May-September 2016 representatives from both fishery and environmental departments of DK, SE and DE drafted the JR. This was signed by all Member States having direct management interest on 6 November 2016 and submitted to the Commission on 16 November 2016.

This JR supplements the areas covered by Regulation 2015/1778 based on JRs from 2015, amended by the Delegated Regulation (EU) 2017/118 as it extends the protected areas with additional four Natura 2000 sites.

The joint recommendation target Natura 2000 sites in Danish waters of the Kattegat. The sites are designated for reef structures (including "bubbling reefs"). For the protection of these structures it is foreseen that fishing with bottom contacting gear be prohibited in reef areas and a total fishing ban be introduced in bubbling 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 on 16 November 2016 were evaluated by the STECF on ad hoc basis⁶.

On the specific elements STECF concluded that:

- The proposed conservation measures, which relates to 7 Danish Natura 2000 sites where reefs are present, is a step forwards to minimise the negative impacts of

⁶ stecf.jrc.ec.europa.eu/documents/43805/55543/2016-12_STECF+16-24+-+JR+for+Natura+2000+sites+under+CFP+art.11_JRCxxx.pdf

fishing activities on the reef habitats and ensure that fisheries activities avoid the degradation of the marine environment as stipulated under Article 2(3) of Regulation 1380/2013.

- 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. However, STECF notes that in one area the proposed boundaries of the no-take zones are positioned very close to the reefs and in some cases do not encompass a buffer zone defined in accordance with ICES Guidelines. STECF further notes that additional measures are required to ensure protection of harbour porpoise (site DK00VA250), grey / harbour seals (sites DK00FX010 and DK 00FX257), sandbanks (all sites), mudflats (sites DK00FX010 and DK 00FX257), lagoons (site DK00FX010) and several bird species (sites DK00FX010 and DK 00FX257).
- The current catch inside the Natura 2000 sites under consideration seems to be limited. Nevertheless, fishing activity is present especially by mobile demersal gears in one area, above or in the vicinity of stone reefs. Fishing activities may also impact the other habitats and species for which the Natura 2000 sites have been declared, most of which currently have an unfavourable conservation status and show decreasing population trends. Thus, STECF considers that the conservation objectives within the special areas 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 (including fishing vessels from other Member States operating in the area). Furthermore, STECF considers that additional measures may be appropriate for fishing vessels without VMS systems (e.g. <12m).

On the basis of the evaluation by STECF and internal assessment by Commission services of the information provided by Denmark, 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 24.2.2017

amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea

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/EC¹, and in particular Article 11 thereof,

Whereas:

- (1) Pursuant to Article 11 of Regulation (EU) No 1380/2013, Member States are empowered to adopt fisheries conservation measures in their waters that are necessary for the purpose of complying with their obligations under Union environmental legislation, including Article 6 of Directive 92/43/EEC² and Article 13(4) of Directive 2008/56/EC³.
- (2) Article 6 of Directive 92/43/EEC requires Member States to establish the necessary conservation measures for Special Areas of Conservation that correspond to the ecological requirements of those natural habitat types and species present on the sites as listed in the Annexes of that Directive. 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) Pursuant to Article 13(4) of Directive 2008/56/EC Member States are to adopt programmes of measures, including spatial protection measures that contribute to coherent and representative networks of marine protected areas, and adequately cover the diversity of the constituent ecosystems, such as special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive⁴, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties.

¹ [OJ L 354, 28.12.2013, p. 22](#)

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

³ [OJ L 164, 25.6.2008, p. 19](#)

⁴ 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) Where a Member State considers that measures need to be adopted for the purpose of complying with its obligations under Union environmental legislation and other Member States have a direct management interest in the fishery to be affected by such measures, the Commission is empowered to adopt such measures by means of delegated acts upon a joint recommendation submitted by the interested Member States.
- (5) On 5 September 2016, the Commission adopted Delegated Regulation (EU) 2017/118⁵ establishing fisheries conservation measures for the protection of the marine environment in certain areas of the North Sea.
- (6) In accordance with Article 11(3) of Regulation (EU) No 1380/2013, Denmark as an initiating Member State has provided the Commission and Member States having direct management interest with relevant information on the additional measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement.
- (7) On 16 November 2016, after 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 in four additional Danish Natura 2000 sites in the Kattegat. Those measures comprise the prohibition of fishing activities with mobile bottom contacting gear in reef zones (under habitat type 1170) and the prohibition of all fishing activities in bubbling reef zones (under habitat type 1180).
- (8) Bottom 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 Danish reef areas, as set out in the joint recommendation, should be included in Delegated Regulation (EU) 2017/118. Bubbling reefs are especially fragile structures and any physical impact is a threat to their conservation status. Accordingly, the prohibition of all fishing activities in the relevant bubbling reef areas, as set out in the joint recommendation, should also be included in that Regulation.
- (9) The Scientific, Technical and Economic Committee for Fisheries (STECF⁶) states in its scientific advice of 6 December 2016 that the proposed conservation objectives within the special areas referred to in the joint recommendation cannot be fully achieved without appropriate measures to prevent fishing activity in the areas.
- (10) STECF identified some issues regarding the control and enforcement of the conservation measures in the sites concerned. 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 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.

⁵ OJ L 19, 25.1.2017, p. 10

⁶ stecf.jrc.ec.europa.eu/documents/43805/55543/2016-12_STECF+16-24+-+JR+for+Natura+2000+sites+under+CFP+art.11_JRCxxx.pdf

- (11) Denmark provided detailed information on the measures ensuring monitoring and control taking account the current level of fishing activity in these areas. These control measures involve sea going fisheries inspections and constant monitoring by the Danish fisheries monitoring centre through the risk based management system. Automatic identification system is also used to supplement VMS data.
- (12) It is important to ensure the assessment of the measures introduced by this Regulation, in particular as regards the control of compliance with fishing prohibitions. Therefore a further assessment should be performed by Denmark in order to ensure the compliance with prohibited fisheries at latest 18 months after this Regulation enters into force.
- (13) Delegated Regulation (EU) 2017/118 should be amended accordingly.
- (14) The fisheries conservation measures established by this Regulation are without prejudice of 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

Amendment of Delegated Regulation (EU) No 2017/118

Delegated Regulation (EU) 2017/118 is amended as follows:

- (1) Article 6 is replaced by the following:

***"Article 6
Review***

1. By 30 June 2017, Member States concerned shall assess the implementation of the measures set out in Article 3 and 4 in:
 - (a) areas 1(1), 1(2) and 1(3), as defined in Annex I; and
 - (b) areas 2(1) to 2(21), as defined in Annex II.
2. By 31 July 2017 Member States concerned shall submit to the Commission a summary report on the assessment referred to in paragraph 1.
3. By 31 October 2018, Member States concerned shall assess the implementation of the measures set out in Article 3 and 4 in:
 - (a) areas 1(4) to 1(7), as defined in Annex I; and
 - (b) areas 2(22), 2(23) and 2(24), as defined Annex II.
4. By 30 November 2018, Member States concerned shall submit to the Commission a summary report on the assessment referred to in paragraph 3."

- (2) Annex I is replaced by the text in Annex I to this Regulation.
- (3) Annex II is replaced by the text in Annex II to this Regulation.
- (4) Annex III is replaced by the text in Annex III to this Regulation.

Article 2

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*.

Done at Brussels,

For the Commission

Jean-Claude JUNCKER
The President