



Council of the
European Union

Brussels, 3 March 2017
(OR. en)

6932/17

PECHE 87
DELECT 42

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	2 March 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 1249 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of XXX amending Delegated Regulation (EU) 2017/117 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(2017) 1249 final.

Encl.: C(2017) 1249 final



Brussels, 2.3.2017
C(2017) 1249 final

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

of **XXX**

amending Delegated Regulation (EU) 2017/117 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.

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.

On 30 November 2016 Denmark, Sweden, Germany and Poland submitted a joint recommendation, relating to fisheries conservation measures for protection of reef structures in three Natura 2000 sites in the Danish part of the Western Baltic Sea. Consequently, an amendment to Commission Delegated Regulation (EU) 2017/117⁴ has been drafted.

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 (OJ L 206, 22.7.1992, p. 7–50)

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 19, 25.01.2017, p. 21

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) alongside the site-specific management plans and mapping of marine habitats, serve as the basis for the fishery management measures in this Regulation.

Sweden, Germany and Poland have fishing rights in the Danish territorial waters in the Baltic Sea. These are important fishing areas for both Denmark and Sweden, and to some extent also to Poland. However, analysis of fishery data show, that the fisheries conservation measures will have no or limited impact on Danish, Swedish and Polish 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.

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.

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 in March 2011 - September 2016.

Several additional meetings were organised with the Danish Fishermen Organization.

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, Germany and Poland in ad hoc working groups comprising of representatives from fisheries and environmental departments.

Joint recommendation

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.

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 of May-September 2016 a joint recommendation was drafted by representatives from both fishery and environmental departments of DK, SE, DE and PL. This was signed by all Member States having direct management interest and submitted to the Commission by BALTFISH Presidency on 30 November 2016.

This joint recommendation targets three 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 this final joint JR submitted to the Commission on 16 November 2016 were evaluated (together with the elements of the JR on fisheries measures in four Danish Nature 2000 sites in the North Sea/Kattegat submitted on 11 November 2016) by the STECF on ad hoc basis⁵.

On the specific elements STECF concluded that

- (1) the proposed conservation measures, which relate to 7 Danish Natura 2000 sites where reefs are present, is a step forwards to minimise the negative impacts of 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.
- (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. 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).

⁵ [2016-12 STECF 16-24 - JR for Natura 2000 sites under CFP art.11 JRCxxx.pdf](#)

- (3) 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.

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 XXX

amending Delegated Regulation (EU) 2017/117 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/EC⁶, and in particular Article 11(2) 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/EEC⁷ and Article 13(4) of Directive 2008/56/EC⁸.
- (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 Directive⁹, 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.

⁶ [OJ L 354, 28.12.2013, p. 22](#)

⁷ 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. 7–50)

⁸ OJ L 164, 25.6.2008, p. 19

⁹ 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) 2017/117¹⁰ establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778.
- (6) In accordance with Article 11(3) of Regulation (EU) No 1380/2013, Denmark provided the Commission and Member States having direct managing interest with relevant information on certain additional measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement.
- (7) On 30 November 2016 Denmark, Sweden, Germany and Poland submitted to the Commission a joint recommendation for fisheries conservation measures to protect reef structures in three additional Danish Natura 2000 sites in the Baltic Sea. That recommendation was submitted after having consulted the Baltic Sea Advisory Council.
- (8) The recommended measures comprise the prohibition of fishing activities with mobile bottom contacting gear in reef zones (under habitat type 1170) and the surrounding buffer zones.
- (9) 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) 2017/117.
- (10) The Scientific, Technical and Economic Committee for Fisheries (STECF)¹¹ 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.
- (11) 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.

¹⁰ OJ L 19, 25.01.2017, p. 21

¹¹ [2016-12 STECF 16-24 - JR for Natura 2000 sites under CFP art.11 JRCxxx.pdf](#)

- (12) 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.
- (13) 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.
- (14) Delegated Regulation (EU) 2017/117 should be amended accordingly.
- (15) 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

Amendment of Delegated Regulation (EU) 2017/117

Delegated Regulation (EU) No 2017/117 is amended as follows:

- (1) In Article 2, point (c) is deleted;
- (2) Article 5 is replaced by the following:

"Article 5
Review

1. By 30 June 2017, Denmark, Germany and Sweden shall assess the implementation of the measures set out in Article 3 and 4 in areas 1 to 7 as defined in the Annex.
 2. By 31 July 2017, Denmark, Germany and Sweden shall submit to the Commission a summary report of the assessment referred to in paragraph 1.
 3. By 31 October 2018, Denmark, Sweden, Germany and Poland shall assess the implementation of the measures set out in Article 3 and 4 in areas 8, 9 and 10 as defined in the Annex.
 4. By 30 November 2018, Denmark, Sweden, Germany and Poland shall submit to the Commission a summary report of the assessment referred to in paragraph 3.";
- (3) The Annex is replaced by the text set out in the Annex 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

The President

[\[...\]](#)