



Council of the
European Union

Brussels, 25 June 2015
(OR. en)

10329/15

PECHE 228
DELECT 75

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 June 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2015) 4247 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 25.6.2015 establishing fisheries conservation measures to protect reef zones in waters under the sovereignty of Denmark in the Baltic Sea and Kattegat

Delegations will find attached document C(2015) 4247 final.

Encl.: C(2015) 4247 final



Brussels, 25.6.2015
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COMMISSION DELEGATED REGULATION (EU) .../...

of 25.6.2015

**establishing fisheries conservation measures to protect reef zones in waters under the
sovereignty of Denmark in the Baltic Sea and Kattegat**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under the Common Fisheries Policy (CFP) fisheries conservation 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 (Habitat² 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 requirement of the natural habitats and species present on the site, and may include 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, with an exclusive Union competence.

The Natura 2000 sites concerned by this proposal have been designated by Denmark for the protection of reef habitats (1170 (reefs) and 1180 (“bubbling reefs”: submarine structures made by leaking gasses). 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 sites 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 ten sites designated before 2010⁴. In accordance with EU legislation, the necessary management measures must be formulated and implemented before 2016.

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. 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 placement of 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)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 Kattegat and the Baltic Sea. These are important fishing areas for both Denmark and Sweden. However, analysis of fishery data show, that the management 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.

When evaluating the practical implementation and enforcement of the proposed measures, the Member States having direct management interest 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, with special regard to national control based on risk management. In accordance with Article 5 of Regulation 1224/2009 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 means that within the existing legal framework the control regime in place will have to be adapted to ensure the control needs arising from the proposed measures by the MS concerned, including the requirement of submitting VMS positions with increased frequency by all vessels concerned. 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 (Denmark, Germany and Sweden).

⁵ reference to be completed later

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 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.

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 for the Baltic Sea on 24 March 2015.

The two joint recommendations target ten Natura 2000 sites in Danish waters, seven in the Baltic and three in 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 reefs and a total fishing ban be introduced in bubbling reefs. 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 that⁶

1. the proposed conservation measures, which relate to 10 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 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. 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.

⁶ http://stecf.jrc.ec.europa.eu/documents/43805/991908/STECF-PLN-15-01_JRCxxx.pdf

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 25.6.2015

establishing fisheries conservation measures to protect reef zones in waters under the sovereignty of Denmark in the Baltic Sea and Kattegat

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/EC⁷, and in particular Article 11 thereof,

Having regard to joint recommendation by Denmark, Germany and Sweden,

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 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁸.
- (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 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 considers that, for the purpose of complying with Article 6 of Council Directive 92/43/EEC, conservation measures need to be adopted in certain areas under its sovereignty in the Kattegat and 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.

⁷ OJ L 354, 28.12.2013, p. 22

⁸ 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

- (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, 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 two joint recommendations for fisheries conservation measures to protect reef structures in Danish Natura 2000 sites. Those recommendations were submitted after having consulted stakeholders, the Baltic Sea Advisory Council and North Sea Advisory Council
- (6) The recommended measures concern seven Natura 2000 sites in the Baltic Sea and three sites in the Kattegat. They comprise the prohibition of fishing activities with mobile bottom contacting gear in reefs zones and the prohibition of all fishing activities in bubbling reef zones.
- (7) In its Scientific advice, the Scientific, Technical and Economic Committee on Fisheries ('STECF')⁹ states that the conservation objectives within the special areas referred to in the joint recommendations cannot be fully achieved without appropriate measures to prevent fishing activity in the areas.
- (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 reef areas, as set out in the joint recommendations, should be included in this Regulation.
- (9) 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 reefs area, as set out in the joint recommendations, should be included in this Regulation.
- (10) STECF identifies some concerns as regards the control and enforcement of the conservation measures and considers that additional control measures may be appropriate. In accordance with Article 5 of Regulation (EU) 1224/2009¹⁰. 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.

⁹ http://stecf.jrc.ec.europa.eu/documents/43805/991908/STECF-PLN-15-01_JRCxxx.pdf

¹⁰ 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. 1–50)

- (11) It is appropriate to ensure the assessment of the measures established by this Regulation, in particular as regards the control of compliance with fishing prohibitions.
- (12) 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

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 flying the flag of Denmark, Germany and Sweden ('the Member States concerned') in waters under the sovereignty of Denmark in the Baltic Sea and Kattegat.

Article 2

Definitions

For the purposes of this Regulation, in addition to those laid down in Article 4 of Regulation (EU) No 1380/2013 and Article 2 of Implementing Regulation (EU) No 404/2011¹¹, the following definitions shall apply:

- (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) "Areas 1" mean the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in Annex I to this Regulation, which shall be measured according to the WGS84 coordinate system.
- (c) "Areas 2" mean the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in Annex II to this Regulation, which shall be measured according to the WGS84 coordinate system.

¹¹ 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. 1–153)

Article 3

Fishing prohibition

1. It shall be prohibited to carry out any fishing activity with bottom contacting gears in Areas 1.
2. It shall be prohibited to carry out any fishing activity in Areas 2.
3. Fishing vessels carrying on board any bottom contacting gear may carry out fishing activities in Areas 1 with gears other than those gears and may transit across Areas 1, provided that the bottom contacting gears be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation (EU) 1224/2009.
4. Fishing vessels may transit across Areas 2, provided that any gear carried on board be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation 1224/2009.

Article 4

Assessment

1. Member States concerned shall assess the implementation of the measures set out in Article 3 at latest 18 months after the entry into force of this Regulation, including the control of compliance with the fishing prohibitions provided for in Article 3.
2. Member States concerned shall submit a summary report of the assessment to the Commission 19 months after the entry into force of this Regulation.

Article 5

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

It shall apply from 1 January 2016.

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

Done at Brussels, 25.6.2015

For the Commission
The President
Jean-Claude JUNCKER