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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document C(2022) 645 final.

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Encl.: C(2022) 645 final



Brussels, 9.2.2022  
C(2022) 645 final

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

**of 9.2.2022**

**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

Article 11 of Regulation (EU) No 1380/2013<sup>1</sup> empowers the Commission to adopt delegated acts on fisheries conservation measures to comply with Union environmental legislation.

Member States are required to designate respectively special areas of conservation and special protection areas to protect habitats and species of EU interest. These areas form the European ecological network Natura 2000. According to the relevant provisions of EU Nature directives (Habitats<sup>2</sup> and Birds<sup>3</sup> Directives), Member States have to establish the necessary conservation measures and take appropriate steps to protect 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.

According 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)<sup>4</sup>, Member States shall take the necessary measures to achieve or maintain good environmental status. When Member States consider 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, these measures have to be adopted in accordance with the rules of the common fisheries policy (CFP).

Denmark (initiating Member State), Sweden and Germany submitted on 2 February 2021 a joint recommendation containing fisheries conservation measures to protect six Marine Strategy Framework Directive areas and one Natura 2000 site located in the Danish part of the Kattegat. The overall aim is to protect soft seabed and reef structures (habitat code 1170) from fisheries with mobile bottom contacting gears. Likewise, Sweden (initiating Member State), Denmark and Germany submitted on 2 February 2021 a joint recommendation containing fisheries conservation measures to protect four marine protected areas in the Swedish part of the Kattegat. The main purpose is to ensure adequate protection of designated and sensitive species and habitat types including the associated ecological functions.

Delegated Regulation (EU) 2017/118<sup>5</sup> established fisheries conservation measures in certain areas of the North Sea. Following the joint recommendations submitted by Sweden and Denmark in February 2021, this delegated regulation should be amended to introduce the new suggested measures.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> OJ L 164, 25.6.2008, p. 19.

<sup>5</sup> OJ L 19, 25.1.2017, p. 10–25.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Denmark and Sweden developed their respective proposals following consultations with different stakeholders at national level.

On the international side, Denmark presented a proposal for pre-consultation with other Member States and the Commission in 2017. An ad-hoc working group met several times in 2017, 2018 and 2019. Denmark consulted the North Sea Advisory Council in 2017 and again in September 2020 on the final proposal.

Sweden organised a pre-consultation meeting in January 2018 with representatives from the other Member States and the Commission. Several ad-hoc meetings took place in 2018 and 2019. Sweden consulted the North Sea Advisory Council in September 2018 and again in September 2020 on the final proposal.

The final joint recommendations presented by Denmark and Sweden contain the following elements:

- measures to close certain areas to fishing activities;
- measures to prohibit the use of mobile bottom contacting gears in certain Marine Strategy Framework Directive (MSFD) areas and Natura 2000 sites;
- measures to allow only certain fishing gear in certain marine protected areas; and
- control and enforcement measures.

These joint recommendations have been developed in close cooperation with Germany. Although there are no major German fisheries taking place in the area, these marine protected areas are part of ICES division 3a (Skagerrak and Kattegat), where Germany has fishing opportunities for a number of target species.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

### **Summary of the proposed action**

The main legal action is to adopt measures that are necessary to comply with Member States obligations under Union environmental law.

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

### **Legal basis**

Article 11(2) of Regulation (EU) No 1380/2013.

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

**of 9.2.2022**

**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/EC<sup>1</sup>, and in particular Article 11(2) thereof,

Whereas:

- (1) Pursuant to Article 11(1) of Regulation (EU) No 1380/2013, Member States are empowered to adopt fisheries conservation measures in their waters that are necessary to comply with their obligations under Article 6 of Council Directive 92/43/EEC ('Habitats Directive')<sup>2</sup>, Article 4 of Directive 2009/147/EC of the European Parliament and of the Council ('Birds Directive')<sup>3</sup> and Article 13(4) of Directive 2008/56/EC of the European Parliament and of the Council ('Marine Strategy Framework Directive')<sup>4</sup>.
- (2) Article 6 of the Habitats Directive 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.
- (3) Article 4 of the Birds Directive requires Member States to establish special conservation measures concerning the habitat of the species mentioned in its Annex I. It also requires Member States to take similar conservation measures for regularly occurring migratory species not listed in its Annex I.
- (4) Pursuant to Article 13(4) of the Marine Strategy Framework Directive, Member States are to adopt programmes of measures to achieve or maintain good environmental status, 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 Directive and marine

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<sup>1</sup> OJ L 354, 28.12.2013, p. 22.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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) (OJ L 164, 25.6.2008, p. 19).

protected areas as agreed by the Union or Member States concerned in the framework of international or regional agreements to which they are parties.

- (5) Where a Member State considers that measures need to be adopted to comply 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 Member States.
- (6) Delegated Regulation (EU) 2017/118 establishes conservation measures in certain marine protected areas in the Kattegat and the marine protected area Bratten area in the North Sea.
- (7) After consulting the North Sea Advisory Council, Denmark, Sweden and Germany submitted to the Commission two joint recommendations to manage fisheries in certain areas of the Kattegat on 2 February 2021. Denmark submitted a joint recommendation to protect soft seabed and reef structures from fisheries with mobile bottom contacting gears in six Marine Strategy Framework Directive (MSFD) areas and one Natura 2000 site in the Danish part of the Kattegat. Sweden submitted a joint recommendation to protect sensitive species and habitat types by only allowing certain fishing gears in four marine protected areas in the Swedish part of the Kattegat.
- (8) The Commission presented these measures by written procedure to an expert group consisting of representatives of the Member States in October 2021.
- (9) The Scientific, Technical and Economic Committee for Fisheries ('STECF') reviewed these joint recommendations and concluded<sup>5</sup> that the measures represent a positive step forward towards minimising the negative impacts of fishing activities on the habitats concerned. These joint recommendations are also expected to contribute to the adequate protection of designated and sensitive species and habitat types including the associated ecological functions in the marine protected areas.
- (10) The measures proposed by Denmark aim at prohibiting mobile bottom contacting gears in the designated areas. The STECF concluded<sup>6</sup> that prohibiting these gears in these vulnerable habitats entails a better protection of soft seabed and reef structures (habitat type 1170) from the impact of fishing activities, thereby contributing to achieving environmental targets.
- (11) The measures proposed by Sweden aim at designating restricted fishery areas and areas where fishing operations are prohibited. The STECF concluded<sup>7</sup> that the impact of the proposed fishing gears in restricted fishery areas is likely to be low and that the measures proposed will represent a positive step forward towards minimising the negative impacts of fishing activities on the habitats concerned. The Commission also notes that Member States committed in the joint recommendation to propose further adjustments and restrict the gillnet fishery if deemed necessary.

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<sup>5</sup> <https://stecf.jrc.ec.europa.eu/documents/43805/2850498/STECF+PLEN+21-01.pdf/874bc98a-5c5a-46a5-a3e5-e9711285b193>

<sup>6</sup> <https://stecf.jrc.ec.europa.eu/documents/43805/2850498/STECF+PLEN+21-01.pdf/874bc98a-5c5a-46a5-a3e5-e9711285b193>

<sup>7</sup> <https://stecf.jrc.ec.europa.eu/documents/43805/2850498/STECF+PLEN+21-01.pdf/874bc98a-5c5a-46a5-a3e5-e9711285b193>

- (12) Member States suggested control and enforcement measures based on the use of automatic identification system ('AIS') for specific areas. The STECF concluded<sup>8</sup> that AIS should be sufficient to undertake real-time monitoring in these areas.
- (13) Delegated Regulation (EU) 2017/118 should be amended to include Scottish pair seine (SPR) in the definition of mobile bottom contacting gear. SPR was unintentionally excluded from the joint recommendations submitted by Denmark in 2015 and 2016 to prohibit the use of mobile bottom contacting gears in Areas 1. Member States requested the Commission to correct this omission.
- (14) Delegated Regulation (EU) 2017/118 and the joint recommendation submitted by Denmark cover only bottom contacting gears that are mobile. For the sake of clarity, the term 'mobile' should therefore be included in the definition of the bottom contacting gears that this Regulation provides for.
- (15) Delegated Regulation (EU) 2017/118 should therefore be amended accordingly.
- (16) This Delegated Regulation is without prejudice to the need for additional conservation measures necessary to comply with the relevant provisions and the Commission's position regarding compliance by the interested Member States with their obligations under the relevant Union environmental legislation,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

- (1) Article 2 is replaced by the following:

*“Article 2*

**Definitions**

For the purposes of this Regulation, the following definitions shall apply in addition to those laid down in Article 4 of Regulation (EU) No 1380/2013, Article 4 of Regulation (EC) No 1224/2009 and Article 2 of Commission Implementing Regulation (EU) No 404/2011\*:

- (1) 'mobile bottom contacting gear' means any of the following gears: bottom trawl, beam trawl, bottom otter trawl, otter twin trawl, bottom pair trawl, nephrops trawl, shrimp trawl, seine net, Danish anchor seine, Scottish seine, Scottish pair seine, boat or vessel seine and dredge;
- (2) '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;
- (3) '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;
- (4) 'Areas 3' mean the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in Annex IV to this Regulation, which shall be measured according to the WGS84 coordinate system;

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<sup>8</sup> <https://stecf.jrc.ec.europa.eu/documents/43805/2850498/STECF+PLEN+21-01.pdf/874bc98a-5c5a-46a5-a3e5-e9711285b193>

(5) ‘Bratten’ means the geographical area enclosed by sequentially joining with rhumb lines the positions listed in Annex III to this Regulation, which shall be measured according to the WGS84 coordinate system;

(6) ‘AIS zones’ means the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in Annex V to this Regulation, which shall be measured according to the WGS84 coordinate system;

(7) ‘Member States concerned’ means Denmark, Germany and Sweden.”

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\* 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).

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(2) Article 3 is replaced by the following:

*“Article 3*

**Fishing prohibition**

1. It shall be prohibited to carry out any fishing activity with mobile bottom contacting gears in Areas 1.

Where fishing vessels carrying on board any mobile bottom contacting gear carry out fishing activities in Areas 1 which are not prohibited by the first subparagraph, the mobile bottom contacting gear concerned shall be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation (EC) No 1224/2009.

2. It shall be prohibited to carry out:

(a) fishing activities in points 2(1) to 2(24) of Areas 2,

(b) fishing operations in points 2(25), 2(26) and 2(27) of Areas 2.

3. Fishing shall be permitted in Areas 3 only with the following gears and under the following conditions:

- handheld gears like rod and line (LHP)
- pelagic trawls (OTM/PTM),
- pots and traps (FPO, FIX) when fishing for crustaceans,
- gillnets and trammel nets (GTN), provided that fishing vessels take part in a national monitoring and assessing programme conducted by or on behalf of the national authorities to evaluate the bycatch of harbour porpoise and seabirds by use of remote electronic monitoring (‘REM’), including the use of on-board closed-circuit television (‘CCTV’) cameras and position data.

As regards the last indent of the first subparagraph, the Member States concerned shall review the data on incidental catches of harbour porpoise and seabirds annually and shall assess it at any time, but no later than 31 December 2024. That data or any new appropriate data shall be used in order to adjust the use of the net fishery in those areas pursuant to the procedure laid down in Articles 11 and 18 of Regulation (EU) No 1380/2013.

4. Paragraph 2(b) and paragraph 3 shall also apply to recreational fisheries.”;

(3) Article 5 is replaced by the following:

*“Article 5*

**Automatic identification system**

The following fishing vessels shall be fitted with and maintain in operation an automatic identification system (AIS) which meets the performance standards set out in Article 10(1) of Regulation (EC) No 1224/2009:

- (a) all fishing vessels present in the marine protected area Bratten;
  - (b) all fishing vessels operating with mobile bottom contacting gears within the AIS-zones as specified in point 1 of Annex V to this Regulation;
  - (c) all fishing vessels present in the AIS-zones as specified in point 2 of Annex V to this Regulation.”;
- (4) Annex I is amended in accordance with point 1 of the Annex to this Regulation;
  - (5) Annex II is amended in accordance with point 2 of the Annex to this Regulation;
  - (6) Annexes IV and V are added in accordance with points 3 and 4 of the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 9.2.2022

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*