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

of 2.3.2018

**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 (Habitats¹ and Birds² Directives and Marine Strategy Framework Directive³) as laid down in Article 11 of Regulation (EU) No 1380/2013⁴.

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 – MSFD) Member States are authorised 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 MSFD, 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 28 February 2017 Belgium together with the Netherlands, France, United Kingdom, Germany and Denmark submitted to the Commission a joint recommendation, relating to fisheries management measures to improve the seafloor integrity by reducing fisheries with mobile bottom contacting gears in four fisheries management zones in the Belgian part of the North Sea to reach good environmental status under MSFD. 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 adequately contribute to the improvement of seafloor integrity and therewith to the obligation of achieving good environmental status under MSFD.

Following the obligation under MSFD, the Good Environmental Status (GES) and the environmental targets for the Belgian marine waters were defined on the basis of the eleven qualitative descriptors listed in Annex I of the MSFD. Specifically in relation to descriptor 6 “sea-floor integrity”, MSFD defines the GES as follows:

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

² 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)

³ OJ L 164, 25.6.2008, p. 19

⁴ 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)

⁵ OJ L 19/10, 25.1.2017, p. 10

“Seafloor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.” Belgium further specified that the GES for seafloor integrity will only be reached if, amongst other things, “physical disturbance of the seafloor is minimised to a sustainable level, taking account of the relative sensitivity of habitat types”.

Specifically in relation to the disturbance of the benthic habitats by fisheries, Belgium defined the following targets:

- “Positive trend in sea floor surface area permanently devoid of bottom-contacting fishing gear disturbance within each of the benthic habitat types (= pressure indicator), as to allow a natural development of the benthic fauna and flora and as to minimise artificial fragmentation of the seafloor (= desired state).”
- “Positive trend in sea floor surface area impacted only by alternative, environment-friendly fishing gear which pursues a substantial reduction of bottom disturbance within each of the benthic habitat types (= pressure indicator), as to allow for an improved benthic habitat quality and as to minimise artificial fragmentation of the seafloor (= desired state).”

Belgium intends to achieve progress towards these targets “through spatially-explicit management actions related to the sectors concerned (i.e. delineation of areas devoid of bottom disturbance and areas open only for environmental-friendly bottom-contacting gear)”.

Belgium designed its fisheries measures proposal within the framework of Marine Spatial Planning (MSP). This process started in 2012, followed by public consultations and international consultation with neighboring countries in 2013 to end up in a legally binding MSP in 2014. This proposal has been published in the Royal Decree of 20 March 2014⁶.

Belgium identified five Member States with fisheries activities within its exclusive economic zone EEZ: The Netherlands, France, United Kingdom, Germany and Denmark. The territorial sea is, in principle, reserved for national fishing vessels. However, on the basis of bilateral agreements, Belgium has granted additional fishing rights to Dutch and French fishing vessels in the Belgian territorial sea.

The Belgian fleet is rather limited (89 vessels in 2011) and is mainly active in non-Belgian waters. The Dutch fleet is much larger as compared to the Belgian fleet (831 vessels in 2008). The proposed coastal measure is likely to have effects on large Dutch beam trawls (above 70 GT), while smaller beam trawls will remain allowed. As a result of the proposed coastal measure, large vessels will in practice have to give up only 6% of their fishing grounds in the proposed area.

The majority of the French fleet activity in the proposed area concerns trawling while other gear is almost not represented.

It is very unlikely that any UK vessels will be affected by the fishing restriction defined in the Belgian fisheries measures proposal. Germany preferred not to include their fleet activity as their management interest affected by the proposed measures is minimal.

An analysis of the Danish fishery in Belgian zone of the North Sea for mobile bottom contacting gears, pelagic gears and other gears has been provided by Denmark. There is no bottom impacting gear used in the proposed area by Danish vessels.

⁶ Le moniteur belge, 28-03-2014, numéro : 2014024098, page : 26936, Arrêté royal du 20 mars 2014 relatif à l'établissement du plan d'aménagement des espaces marins

The proposed fisheries management measures do not require additional control and enforcement measures as control of the proposed fisheries management measures will be covered by current control systems.

Control and enforcement of the proposed fisheries management measures will be based on a combination of procedures: VMS, aerial and marine control and technical control on board of vessels. The use of AIS will be limited: only when there is a suspicion of infringement.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Stakeholder consultations

Since autumn 2012 Belgian authorities held formal and informal consultations with various stakeholders both within and outside Belgium.

The Belgian proposal has been designed in the period 2012-2014 as international consultations were performed during the MSP-process as the proposed fisheries measures have been included in the Belgian MSP: the Netherlands, France and the United Kingdom were asked for their advice on the draft MSP by letter.

In addition, specifically in relation to the fisheries measures, informal consultations with the Netherlands and France took place. As a result, the draft MSP was adapted taking into account the results of the consultations.

The Belgian proposal for fisheries management measures to improve the seafloor integrity has been coordinated with representatives from environmental and fisheries departments of different involved Member States. Consultation with the North Sea Advisory Council has been undertaken (September 2015 and November 2016) and several stakeholders and experts have been involved during the process.

The regional coordination took place since April 2015. The Ad Hoc Working Group was created under the North Sea Fish-ENVI technical expert group of the Scheveningen Group.

The draft background document was developed and thoroughly reworked based on the comments of Member States during 10 meetings in Brussels, the Hague, Paris or bilateral meetings via teleconference and the final version of the document was discussed in the Ad Hoc Group beginning of July 2016.

In January 2017 the final approval was given by Scheveningen High Level Group in order to submit the joint recommendation to the Commission.

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 September 2016 – January 2017 representatives from both fishery and environmental departments of Belgium, The Netherlands, France, UK, Germany and Denmark drafted the JR. This was approved by all Member States having direct management interest and submitted by Belgium on 28 February 2017 to the Commission.

This JR will expand a list of protected areas covered by Delegated Regulation (EU) 2017/118.

The joint recommendation target four fisheries management zones located in the Belgian part of the North Sea. Two sites lie within 12NM (i.e. zone 1 and zone 2), and two sites outside 12NM (i.e. zone 3 and 4). The following measures are proposed in these sites:

In Zone 1 all fishing vessels currently present in the area may continue their activities on condition that beams with wheels (“roller shoes”) are incorporated into the fishing equipment. For shrimp fishing a sieving net is obligatory. Existing vessels may be replaced. New vessels are allowed to fish in the area using non-seabed-disturbing fishing gear. This means that vessels that were up until now not active in this area cannot use seabed-impacting gear.

In Zone 2 only non-seabed-impacting fishing gear is allowed. Moreover, testing of alternative seabed-impacting fishing gear is allowed under a permit system. A three-year transition period is established during which existing fishing gear in the area are still allowed.

In Zone 3 only non-seabed-impacting fishing gear and Danish seining are allowed.

In Zone 4 only non-seabed-impacting fishing gear and Danish seining is allowed. Moreover, testing of alternative seabed-impacting fishing gear is allowed under a permit system. A three-year transition period is established during which existing fishing gear in the area are still allowed.

Belgium requested ICES to review a draft procedure to allow for scientific testing of bottom impacting fishing gear in two fisheries management zones.⁷ ICES organized for three independent reviews to be undertaken on a Belgian procedure for providing authorization to enter two specific fisheries management zones to test lower/alternative bottom impacting fishing gear.

Scientific, Technical and Economic Committee for Fisheries (STECF)

The main elements of the final joint JR submitted to the Commission were evaluated on 27-31 March 2017 by STECF during the plenary session.⁸

On the basis of the evaluation by STECF and internal assessment by Commission services of the information provided by Belgium, 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 the Marine Strategy Framework Directive – (MSFD) and Habitat Directive.

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 pursuant to Article 3.1 d) of the Treaty of Functioning of the European Union.

Proportionality principle

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http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2016/Special_Requests/Belgium_Technical_Service_Review_MPA_procedure.pdf

⁸ <https://stecf.jrc.ec.europa.eu/documents/43805/1672821/STECF+PLEN+17-01.pdf>

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 Art.6 of Habitats Directive, Art. 13.4 of MSFD by means of delegated acts, when amongst the initiating Member State, other Member States have a direct management interest in the fishery affected by those measures. 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 2.3.2018

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/EC⁹, and in particular Article 11 thereof,

Whereas:

- (1) Pursuant to Article 11(2) of Regulation (EU) No 1380/2013, where a Member State considers that conservation measures for the purpose of complying with the obligations under Union environmental legislation, including Article 6 of Directive 92/43/EEC¹⁰ and Article 13(4) of Directive 2008/56/EC¹¹ 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 the measures, the Commission is empowered to adopt such measures by means of delegated acts upon a joint recommendation submitted by the interested Member States.
- (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 Marine Strategy Framework 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 Directive 92/43/EEC, special protection areas pursuant to Directive 2009/147/EC of the European Parliament and of the Council¹², and marine protected areas as agreed by the Union or Member States

⁹ OJ L 354, 28.12.2013, p. 22

¹⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

¹¹ OJ L 164, 25.6.2008, p. 19

¹² 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)

concerned in the framework of international or regional agreements to which they are parties.

- (4) Commission Delegated Regulation (EU) 2017/118¹³ established fisheries conservation measures for the protection of the marine environment in certain areas of the North Sea.
- (5) Belgium considers that additional conservation measures are necessary for the protection of the marine environment in four fisheries management zones in Belgian territorial waters and the adjacent exclusive economic zone of the North Sea. In accordance with Article 11(3) of Regulation (EU) No 1380/2013, Belgium has provided the Commission and the Member States having a direct management interest in the fisheries concerned with relevant information on the additional measures required, including their rationale, the supporting scientific evidence and details on their practical implementation and enforcement.
- (6) On 28 February 2017, after having consulted the North Sea Advisory Council, Belgium together with Denmark, Germany, France, the Netherlands and United Kingdom submitted to the European Commission a joint recommendation relating to fisheries management measures to improve the seafloor integrity by reducing fisheries with mobile bottom contacting gears in the four fisheries management zones concerned.
- (7) The measures comprise the fishing prohibition with mobile bottom contacting gears with two exceptions regarding two areas and special conditions for fisheries.
- (8) A transitional period of three years should be established for two areas during which existing fishing gear should still be allowed.
- (9) The testing of alternative seabed-impacting fishing gear should only be allowed subject to a specific authorisation issued in relation to scientific projects which ensure scientific testing of environmental impacts.
- (10) The specific authorisation for testing alternative sea seabed-impacting fishing gear will be based on the opinion of a selection committee charged to select suitable scientific projects.
- (11) The selection committee will follow the special procedure reviewed and adapted by International Council for the Exploration of the Sea (ICES)¹⁴ to ensure that the conditions concerning scientific testing are fulfilled prior to the delivery of the authorisation. There have to be clear indications that the proposed alternative gear for testing is expected to have a lower impact on the seabed.
- (12) According to the scientific advice issued by the Scientific, Technical and Economic Committee for Fisheries (STECF) in its plenary session of 27-31 March 2017¹⁵, the measures suggested in the joint recommendation may reduce the impact of fisheries with mobile bottom contacting gears and help maintain and/or improve seafloor integrity in the specified management zones. The measures represent a positive step towards minimising the negative impacts of fishing on the marine ecosystem and, if

¹³ OJ L 19, 25.1.2017, p. 10

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http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2016/Special_Requests/Belgium_Technical_Service_Review_MPA_procedure.pdf

¹⁵ <https://stecf.jrc.ec.europa.eu/documents/43805/1672821/STECF+PLEN+17-01.pdf>

effectively implemented, will likely contribute to the aim of avoiding the degradation of the marine environment.

- (13) STECF stated that the suggested conservation measures would contribute to achieving a good environmental status as prescribed under Article 9 of Directive 2008/56/EC.
- (14) Delegated Regulation (EU) 2017/118 should therefore be amended accordingly.
- (15) 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 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 404/2011¹⁶:

- (1) '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, boat or vessel seine and dredge;
- (2) 'alternative seabed-impacting fishing gear' means bottom contacting gear modified to reduce the impact on the seabed";
- (3) 'roller shoes' mean trawl heads rigged with wheel shaped rollers allowing the trawl heads to roll over the seafloor rather than shove over the seafloor;
- (4) 'sieving net' means a conical shaped net rigged in the inside of a trawl net, connected at the front with its full circumference to the surrounding trawl net and at the rear to an outlet in the belly of the trawl net, and having a mesh size which is significantly larger than the mesh size of the trawl net;
- (5) 'Areas 1' means 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;

¹⁶ 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)

- (6) 'Areas 2' means 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;
- (7) 'Areas 3' means the geographical areas 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;
- (8) 'Areas 4' means 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;
- (9) 'Areas 5' 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;
- (10) 'Areas 6' means the geographical areas enclosed by sequentially joining with rhumb lines the positions listed in Annex VI to this Regulation, which shall be measured according to the WGS84 coordinate system;
- (11) 'Bratten' means the geographical area enclosed by sequentially joining with rhumb lines the positions listed in Annex VII to this Regulation, which shall be measured according to the WGS84 coordinate system;
- (12) 'Member States concerned' means Denmark, Germany and Sweden."

- (2) Article 3 is replaced by the following Articles 3 to 3e:

*"Article 3
Fishing prohibitions in Areas 1*

1. It shall be prohibited to carry out any fishing activity with bottom contacting gears in Areas 1.
2. Fishing vessels carrying on board any bottom contacting gear may carry out fishing activities in Areas 1 with gears other than those gears provided that the bottom contacting gears be lashed and stowed in accordance with the conditions laid down in Article 47 of Regulation (EC) No 1224/2009.

*Article 3a
Fishing prohibitions in Areas 2*

It shall be prohibited to carry out any fishing activity in Areas 2.

*Article 3b
Fishing prohibitions in Areas 3*

1. In Areas 3, it shall be prohibited to carry out any fishing activity with bottom contacting gears.

2. The prohibition set out in paragraph 1 shall not apply to active fishing vessels that carried out fishing activities in Areas 3 on ...[date of entry into force of this amending Regulation, to be inserted by the Publications Office], provided that the beams with wheels (roller shoes) are incorporated into their fishing equipment and that sieving nets are used for shrimp fishing.

Article 3c
Fishing prohibitions in Areas 4

1. In Areas 4 it shall be prohibited to carry out any fishing activity with bottom contacting gears.
2. Testing of alternative seabed-impacting fishing gear shall be allowed under a specific authorisation procedure related to scientific research projects.
3. By way of derogation from paragraph 1, bottom contacting gears in use on ...[date of entry into force of this amending Regulation, to be inserted by the Publications Office] shall be allowed in Areas 4 for a transitional period of three years from that date.

Article 3d
Fishing prohibitions in Areas 5

In Areas 5 it shall be prohibited to carry out any fishing activity with bottom contacting gears, with the exception of Danish seines.

Article 3e
Fishing prohibitions in Areas 6

1. In Areas 6 it shall be prohibited to carry out any fishing activity with bottom contacting gears, with the exception of Danish seines.
 2. Testing of alternative seabed-impacting fishing gear shall be allowed under a specific authorisation procedure related to scientific research projects.
 3. By way of derogation from paragraph 1, bottom contacting gears in use on ...[date of entry into force of this amending Regulation, to be inserted by the Publications Office] shall be allowed in Areas 6 for a transitional period of three years from that date."
- (3) In Article 6(1) and (3), the words 'Articles 3 and 4' are replaced by the words 'Articles 3, 3a and 4'.
- (4) Annex III becomes Annex VII.

- (5) The texts set out in the Annex to this Regulation are inserted as Annexes III, IV, V and VI.

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, 2.3.2018

For the Commission
The President
Jean-Claude JUNCKER