Commission Delegated Regulation (EU) 2017/118 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the North Sea

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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[(1)], and in particular Article 11(2) thereof,

Whereas:

(1) Pursuant to Article 11 of Regulation (EU) No 1380/2013, fisheries conservation measures may be adopted that are necessary for the purpose of complying with their obligations under Union environmental legislation, including Article 6 of Council Directive 92/43/EEC[(2)] and Article 13(4) of Directive 2008/56/EC of the European Parliament and of the Council[(3)].

(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) 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 Directive[(4)], 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.

(4) Denmark considered that, for the purpose of complying with Article 6 of Directive 92/43/EEC, conservation measures needed to be adopted in certain areas under its sovereignty in the Kattegat, North 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/118. (See end of Document for details)*

(5) Denmark, 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 with relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement.

(6) On 13 March 2015, having consulted the North Sea Advisory Council, Denmark, Germany and Sweden submitted to the Commission two joint recommendations for fisheries conservation measures to protect reef structures in three Danish Natura 2000 sites in the Kattegat, North Sea and seven sites in the Baltic. They comprise the prohibition of fishing activities with mobile bottom contacting gear in reef (habitat type 1170) zones and the prohibition of all fishing activities in bubbling reef (under habitat type 1180) zones.

(7) The Scientific, Technical and Economic Committee for Fisheries ('STECF')[(5)] stated in its scientific advice of 17 April 2015 that the conservation objectives within the Special Areas of Conservation referred to in the joint recommendations could not be fully achieved without appropriate measures to prevent fishing activity in the areas.

(8) STECF identified some concerns as regards the control and enforcement of the conservation measures and considered that additional control measures may be appropriate. In accordance with Article 5 of Council Regulation (EC) No 1224/2009[(6)]. 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 vessels monitoring systems (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) On 25 June 2015, the Commission adopted Delegated Regulation (EU) 2015/1778[(7)] in order to establish fisheries conservation measures for the protection of the relevant reef zones in the Baltic Sea and the Kattegat.

(10) Delegated Regulation (EU) 2015/1778 provided for the prohibition to fish with mobile bottom contacting gear in the relevant reefs areas in the Baltic Sea and the Kattegat, since such fishing has a negative impact on reef habitats and affects both the reef structures and the biodiversity found at the reefs.

(11) Furthermore that Regulation prohibited all fishing activity in the relevant bubbling reef areas in the Kattegat since bubbling reefs are especially fragile structures and any physical impact is a threat to their conservation status.

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

(13) Sweden now considers that, for the purpose of complying with Article 6 of Directive 92/43/EEC and Article 13(4) of Directive 2008/56/EC, conservation measures need to

be adopted in certain areas under its sovereignty and jurisdiction in the Skagerrak, North Sea.

(14) Denmark, 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, Sweden provided Denmark and Germany with relevant information on the measures required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement.

(15) On 10 June 2016, having consulted the North Sea Advisory Council, Denmark, Germany and Sweden submitted to the Commission a further joint recommendation for fisheries conservation measures to protect reef structures, pockmarks and sea-pen and burrowing megafauna communities in the Bratten area located in the Skagerrak. The measures would prohibit fishing activities in a number of zones.

(16) In Bratten, it is necessary to prohibit all fishing activities in the relevant reef areas, considering the increased difficulty in controlling fishing activities and minimal pelagic fishery.

(17) To ensure appropriate control of fishing activities in the marine protected area Bratten, all fishing vessels should be fitted with and maintain in operation an automatic identification system (AIS) during their stay in Bratten, creating an alert zone around the closed areas.

(18) STECF[(8)] states in its scientific advice of 8 July 2016 that the proposed conservation objectives in Bratten MPA, where reefs, pockmarks and threatened species are present, cannot be fully achieved without appropriate measures to prevent fishing activity in the areas.

(19) However, STECF notes that the proposed boundaries of the no-take zones are positioned very close to the reefs and do not encompass a buffer zone defined in accordance with ICES Guidelines. STECF considers that buffer zones are useful for conservation purposes and controllability, while corridors defined in the proposal appear really small. In addition, very few sensible habitats take place in area 14 whose closure, approved by all stakeholders, is mainly justified by a precautionary approach to avoid a future increase of the fishing pressure on deep sea floors.

(20) Following the new joint recommendation submitted on 10 June 2016, it is appropriate to repeal Delegated Regulation (EU) 2015/1778 and to rearrange the relevant conservation measures by sea basin into two different legal instruments.

(21) This Regulation should only apply to the North Sea and comprise the conservation measures currently applicable in the Kattegat and those suggested for the Bratten area in the joint recommendation of 10 June 2016.

(22) The conservation measures currently applicable in the Baltic Sea should be included in a separate new Regulation.

(23) 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,

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/118. (See end of Document for details)*

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 and Article 13(4) of Directive 2008/56/EC.

2 This Regulation applies to fishing vessels in the North Sea.

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[(9)]:

(a) ‘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;

(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.

(d) ‘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.

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

Article 3

Fishing prohibition

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

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

Article 4

Transit

1 Fishing vessels carrying on board any bottom contacting gear 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 (EC) No 1224/2009.

2 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 (EC) No 1224/2009.

Article 5

Automatic identification system

All fishing vessels present in Bratten 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.

[*F1**Article 6*

Review

1 By 30 June 2017, Member States concerned shall assess the implementation of the measures set out in Articles 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(2), 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 Articles 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.**]**

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2017/1180 of 24 February 2017 amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea.