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COMMISSION STAFF WORKING DOCUMENT

**on the establishment of conservation measures under the Common Fisheries Policy for
Natura 2000 sites and for Marine Strategy Framework Directive purposes**

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1. INTRODUCTION

This staff working document has been elaborated by Commission services after consultation with the Member States' experts and the relevant stakeholders. The aim of this document is to describe good practices on the elements to be considered by the Member States when preparing joint recommendations for the adoption of conservation measures under the Common Fisheries Policy (CFP)¹ to comply with their obligations pertaining to Article 6 of the Habitats Directive², Article 4 of the Birds Directive³ and Article 13(4) of the Marine Strategy Framework Directive (MSFD)⁴. It aims to recall the rules and procedures relating to the submission of a joint recommendation by the Member States, in order for the Commission to adopt conservation measures by means of a delegated act pursuant to Articles 11(2) and 11(3) of the CFP.

This document replaces the guidance note on "*Fisheries measures for marine Natura 2000 sites*" that was issued in 2009 on the basis of the previous CFP. It takes into account the new regionalisation model, according to which Member States may submit joint recommendations under Article 11 of the CFP for the adoption of conservation measures through Commission delegated acts.

The good practices described in this document are for information purposes only, and are without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.

All the relevant legal provisions are reproduced in full in the Annex.

2. BACKGROUND

In accordance with Article 6 of the Habitats Directive and Article 4 of the Birds Directive, Member States are required to establish conservation measures for Natura 2000 sites designated under those directives (respectively Special Areas of Conservation⁵ and Special Protection Areas) in order to prevent the deterioration and disturbance of habitats and species for which the sites are designated and to fulfil their ecological requirements. In accordance with Article 13(4) of the MSFD, programmes of measures

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (OJ L 354, 28.12.2013, p. 34).

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).

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 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 (OJ L 164, 25.6.2008, p. 19).

⁵ Art. 6(2-4) of the Habitats Directive applies also to Sites of Community Importance.

under the directive shall include spatial protection measures contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, such as marine protected areas.

In the area of the Common Fisheries Policy, Member States may adopt conservation measures necessary for compliance with obligations under Union environmental legislation pursuant to Article 11 of the CFP. These measures, to be adopted for the conservation of marine biological resources, fall according to Article 3(1)(d) TFEU under the exclusive competence of the EU and can be adopted on the basis of the empowerment settled in Article 11.

Article 11 of the CFP introduces two scenarios:

Scenario 1 (Article 11(1)): the measures⁶ to be adopted may affect exclusively fishing vessels flying the flag of the Member State concerned. In this case, the Member State concerned is empowered to adopt the measures in question under the specified conditions set out in Article 11(1) of the CFP.

Scenario 2 (Article 11(2)-11(3)): the measures to be adopted would affect a fishery where more than one Member State has a direct management interest⁷. In this case, the Member States concerned shall cooperate at regional level to develop a joint recommendation and to submit it to the Commission. After assessing whether the joint recommendation is in line with the requirements set out in Article 11, the Commission is empowered to adopt these measures by means of a delegated act. For this purpose, Article 18 (1) to (4) and (6) of the CFP applies.

In the absence of a joint recommendation within the deadline set in Article 11(3), 1st subparagraph, or in the case that the joint recommendation does not meet the requirements of Article 11(1) of the CFP, conservation measures may be adopted through the ordinary legislative procedure in line with Article 11(3) 2nd sub-paragraph of the CFP.

In cases of urgency and in the absence of joint recommendations, the Commission shall adopt the measures in line with Article 11(4) of the CFP.

Without prejudice to the above, where the conservation measures apply exclusively within the 12 nautical miles zone, Member States may also adopt them pursuant to Article 20 of the CFP under the conditions set therein.

⁶ Under this scenario, pursuant to Article 11(1), the measures may apply either within the 12 nautical miles zone or within the Exclusive Economic Zone of the Member State concerned, or within both.

⁷ Under this scenario, pursuant to Article 11(2), the measures may apply within the Exclusive Economic Zone or both within the 12 nautical miles zone and within the Exclusive Economic Zone.

3. JOINT RECOMMENDATIONS

3.1. Preparing a joint recommendation

In preparing a joint recommendation, the following steps should be envisaged.

- Identifying other Member States concerned

It is the responsibility of the initiating Member State to determine whether the measures may affect fishing vessels flying the flag of other Member States or which other Member States have a direct management interest in the fishery to be affected by measures it intends to adopt. Pursuant to Article 4(1)(22) of the CFP, this direct management interest consists of either fishing opportunities or a fishery taking place in the exclusive economic zone of the initiating Member State. A broad and transparent approach in consulting the other Member States may help to identify which Member States have a direct management interest in the fishery to be affected. It is highly recommended that the relevant national authorities engage in early cooperation at Member State level between fisheries and nature conservation authorities, as well as other relevant departments (e.g. fisheries control, marine, etc.).

- Preparing the joint recommendation and consulting stakeholders

Article 11(3) of the CFP refers to a six-month timeframe for the Member States to submit a joint recommendation once the Member States concerned consider that the initiating Member State has provided sufficient information on the conservation measures required. This means that after the initiating Member State has provided the other Member States with sufficient information on the measures required, Member States have six months to submit the joint recommendation. The Commission then has three months to check if the measures are in line with existing legislation (i.e., as applicable, the CFP Regulation, the MSFD and the Birds and Habitats Directives), carry out an assessment on the basis of the scientific advice, and adopt the measures by means of a delegated regulation.

Given that the process of gathering information and the necessary scientific assessment as well as the preparations of the joint recommendations can be lengthy, this should be carefully planned. Thus, it is considered best practice to ensure early stakeholder involvement and transparency of procedures, including the timeline. It is considered best practice to undertake informal consultations with other Member States and stakeholders concerned before the official 6-month period is triggered.

During the preparation of joint recommendations, in accordance with Article 18(2) of the CFP, Member States have to consult the Advisory Councils established under the CFP.

In order for this consultation to be meaningful and, in line with other established areas of good practice⁸, in consulting partners (Member States and stakeholders), the following best practices have been identified:

- (a) timely disclosure of and easy access to relevant information, including an indicative timeline;
- (b) sufficient time for partners to analyse and comment on key preparatory documents;
- (c) available channels through which partners may ask questions, may provide contributions and are informed of the way in which their proposals have been taken into consideration;
- (d) dissemination of the outcome of the consultation.

Since the Commission is empowered to adopt the measures contained in the joint recommendation, it is of key importance that the measures in the joint recommendation are clear, complete and fit for purpose in line with Article 11(1) of the CFP. The obligations under Union environmental legislation and the conservation objectives⁹ of the sites concerned are the starting point of the process.

3.2. Information accompanying the joint recommendation

Member States should ensure their joint recommendations are accompanied by the necessary biological, environmental, social, economic, technical and any other information considered relevant for the Commission to undertake its assessments in line with the provisions of Article 11 of the CFP, including relevant scientific advice.

The proposed measures should be necessary for the purpose of complying with environmental legislation referred in point 1 of this document. Those measures should be proportionate to the objectives pursued and give due consideration to sustainable development and the social and economic impacts of the measure envisaged. The proposed measures should be clearly described, demonstrating how they are consistent with the conservation objectives for the site concerned and with the precautionary approach to fisheries management "*according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment*" (Article 4(8) of the CFP).

The box below sets out good practices and examples of information to be included with the submission of the joint recommendations. This list is not exhaustive.

⁸ For example, see relevant elements in 'Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds'.

⁹ Under MSFD, this would be the assessment of environmental status (Art. 8(1)(a)) and the establishment of environmental targets (Art. 10) to achieve good environmental status..

ELEMENTS OF GOOD PRACTICE REGARDING THE INFORMATION TO BE PROVIDED BY THE MEMBER STATES WITH THE SUBMISSION OF THE JOINT RECOMMENDATIONS

1. The conservation status of the protected habitats and/or species and the conservation objectives of the Natura 2000 site¹⁰ should be clearly set out.
2. Scientific advice accompanying the joint recommendations should be reliable and where appropriate include a detailed mapping of the protected habitats.
3. Fishing activities should be adequately described. Examples of information that can be included are: operational fleet statistics such as fleet activity in the area and in the region, distribution of fleets (by nation, gear and species); identification of Member States with a currently active fishing interest in the site; site-specific information on fishing activities/techniques, target and by-catch species, effort, and spatial use; seasonal patterns of fishing activity over recent time periods, e.g. 3-5 years; and likely patterns of fishing activity in the future.
4. The effects of fishing activities on the protected habitats and/or species should be adequately described and assessed. Examples of information that can be included are: identification of threatening fishing activities; known and likely impacts of the different types of fishing gears on the protected habitats and/or species; interaction between fishing activities and protected habitats and/or species; localised or site-specific impacts of the different types of fishing gears on the protected habitats and/or species.

Information on known and likely impacts of other, non-fishing, human activities in the area and the cumulative effects on the protected habitats and/or species should also be provided.

5. The expected conservation benefits of the proposed measures on the protected areas (in terms of favourable conservation status of habitats and/or species or good environmental status under the MSFD) should be described.
6. The expected impacts of the proposed measures on fishing activities, including socio-economic impacts, should be described. For new measures falling under the MSFD programme of measures, the cost-benefit analyses or impact assessment carried out in accordance with Article 13(3) of the MSFD should be included.
7. Adequate monitoring of the implementation of measures, in relation to the fisheries affected and the environmental objectives to be achieved as well as their periodical review should be foreseen, e.g. measures to monitor and assess the maintenance and/or recovery of the habitats and/or species within the site including a timeframe for review of measures.
8. The possible displacement of the fishing effort and its impact on new areas should be evaluated and reported accordingly.

¹⁰ Under MSFD, this would be the assessment of environmental status (Art. 8(1)(a)) and the establishment of environmental targets (Art. 10) to achieve good environmental status.

9. The proposed control and enforcement measures should be clearly set out. Examples of information that can be included are: control measures envisaged by the Member State or regional organisations, possible ecological and buffer zones to ensure site protection and/or effective control measures.

10. Information on the coordination with neighbouring Member States should be provided, as appropriate. Information on the consultation of the respective Advisory Council(s) should also be provided.

3.3. Adoption of the delegated act

The Commission has 3 months to adopt the delegated act pursuant to Article 11(3) of the CFP in conjunction with Article 18 of the CFP.

The Commission services evaluate the joint recommendation. In doing so the Commission consults appropriate scientific bodies in line with Article 26 of the CFP and is assisted, where appropriate, by the Scientific, Technical and Economic Committee for Fisheries (STECF) who provides relevant scientific assessment. The STECF evaluation needs to be validated at its plenary session. Therefore, it is important to take into account the schedule of STECF plenary meetings for timely delivery of this evaluation.

If the evaluation of Commission services is positive, the Commission prepares a draft Delegated Regulation and submits it to the relevant Expert Groups for consultation, after which the Delegated Regulation is adopted by the Commission.

After the adoption of the Delegated Regulation by the Commission, there is an objection period of 2 months for the European Parliament and the Council, which can be renewed once. If no objection is raised within this timeframe, the Delegated Regulation is published in EU Official Journal and enters into force.

The list of the joint recommendations submitted to the Commission and the Delegated Regulations adopted and published is available at the Commission services websites:

https://ec.europa.eu/fisheries/cfp/fishing_rules_en

http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm

ANNEX – RELEVANT PROVISIONS

Articles 4(1), 11, 18 and 26 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

"Article 4

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(8) 'precautionary approach to fisheries management', as referred to in Article 6 of the UN Fish Stocks Agreement, means an approach according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment;

(22) 'Member State having a direct management interest' means a Member State which has an interest consisting of either fishing opportunities or a fishery taking place in the exclusive economic zone of the Member State concerned, or, in the Mediterranean Sea, a traditional fishery on the high seas.

(...)

Article 11

Conservation measures necessary for compliance with obligations under Union environmental legislation

1. Member States are empowered to adopt conservation measures not affecting fishing vessels of other Member States that are applicable to waters under their sovereignty or jurisdiction and that are necessary for the purpose of complying with their obligations under Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC, provided that those measures are compatible with the objectives set out in Article 2 of this Regulation, meet the objectives of the relevant Union legislation that they intend to implement, and are at least as stringent as measures under Union law.

2. Where a Member State ("the initiating Member State") considers that measures need to be adopted for the purpose of complying with the obligations referred to in paragraph 1 and other Member States have a direct management interest in the fishery to be affected by such measures, the Commission shall be empowered to adopt such measures, upon request, by means of delegated acts in accordance with Article 46. For this purpose, Article 18(1) to (4) and (6) shall apply mutatis mutandis.

3. The initiating Member State shall provide the Commission and the other Member States having a direct management interest with relevant information on the measures

required, including their rationale, scientific evidence in support and details on their practical implementation and enforcement. The initiating Member State and the other Member States having a direct management interest may submit a joint recommendation, as referred to in Article 18(1), within six months from the provision of sufficient information. The Commission shall adopt the measures, taking into account any available scientific advice, within three months from receipt of a complete request.

If not all Member States succeed in agreeing on a joint recommendation to be submitted to the Commission in accordance with the first subparagraph within the deadline set therein, or if the joint recommendation is deemed not to be compatible with the requirements referred to in paragraph 1, the Commission may submit a proposal in accordance with the Treaty.

4. By way of derogation from paragraph 3, in the absence of a joint recommendation referred to in paragraph 3, in cases of urgency, the Commission shall adopt the measures. The measures to be adopted in a case of urgency shall be limited to those in the absence of which the achievement of the objectives associated with the establishment of the conservation measures in accordance with the Directives referred to in paragraph 1 and the Member State's intentions, is in jeopardy.

5. The measures referred to in paragraph 4 shall apply for a maximum period of 12 months which may be extended for a maximum period of 12 months where the conditions provided for in that paragraph continue to exist.

6. The Commission shall facilitate cooperation between the Member State concerned and the other Member States having a direct management interest in the fishery in the process of implementation and enforcement of the measures adopted under paragraphs 2, 3 and 4.

(...)

Article 18

Regional cooperation on conservation measures

1. Where the Commission has been granted powers, including in a multiannual plan established pursuant to Articles 9 and 10, as well as in cases provided for in Articles 11 and 15(6), to adopt measures by means of delegated or implementing acts in respect of a Union conservation measure applying to a relevant geographical area, Member States having a direct management interest affected by those measures may, within a deadline to be stipulated in the relevant conservation measure and/or multiannual plan, agree to submit joint recommendations for achieving the objectives of the relevant Union conservation measures, the multiannual plans or the specific discard plans. The Commission shall not adopt any such delegated or implementing acts before the expiry of the deadline for submission of joint recommendations by the Member States.

2. For the purpose of paragraph 1, Member States having a direct management interest affected by the measures referred to in paragraph 1 shall cooperate with one another in

formulating joint recommendations. They shall also consult the relevant Advisory Councils. The Commission shall facilitate the cooperation between Member States, including, where necessary, by ensuring that a scientific contribution is obtained from the relevant scientific bodies.

3. Where a joint recommendation is submitted under paragraph 1, the Commission may adopt those measures by means of delegated or implementing acts, provided that such recommendation is compatible with the relevant conservation measure and/or multiannual plan.

4. Where the conservation measure applies to a specific fish stock shared with third countries and managed by multilateral fisheries organisations or under bilateral or multilateral agreements, the Union shall endeavour to agree with the relevant partners the measures that are necessary to achieve the objectives set out in Article 2.

5. Member States shall ensure that the joint recommendations on conservation measures to be adopted pursuant to paragraph 1 are based on the best available scientific advice and fulfil all of the following requirements:

(a) they are compatible with the objectives set out in Article 2;

(b) they are compatible with the scope and objectives of the relevant conservation measure;

(c) they are compatible with the scope and meet the objectives and quantifiable targets set out in a relevant multiannual plan effectively;

(d) they are at least as stringent as measures under Union law.

6. If all Member States do not succeed in agreeing on joint recommendations to be submitted to the Commission in accordance with paragraph 1 within a set deadline or if the joint recommendations on conservation measures are deemed not to be compatible with the objectives and quantifiable targets of the conservation measures in question, the Commission may submit a proposal for appropriate measures in accordance with the Treaty.

7. In addition to the cases referred to in paragraph 1, Member States having a direct management interest in a fishery in a defined geographical area may also make joint recommendations to the Commission on measures to be proposed or adopted by the Commission.

8. As a supplementary or alternative method of regional cooperation, Member States will be empowered, in a Union conservation measure that applies to a relevant geographical area, including in a multiannual plan established pursuant to Articles 9 and 10, to adopt within a set deadline measures further specifying that conservation measure. The Member States concerned shall closely cooperate in the adoption of such measures. Paragraphs 2, 4 and 5 of this Article shall apply mutatis mutandis. The Commission shall be associated and its comments shall be taken into account. Member

States shall only adopt their respective national measures if an agreement on the content of those measures has been reached by all the Member States concerned. Where the Commission considers that a Member State's measure does not comply with the conditions set out in the relevant conservation measure, it may, subject to providing relevant reasons, request that the Member State concerned amend or repeal that measure.

(...)

Article 26

Consulting scientific bodies

The Commission shall consult appropriate scientific bodies. STECF shall be consulted, where appropriate, on matters pertaining to the conservation and management of living marine resources, including biological, economic, environmental, social and technical considerations. Consultations of scientific bodies shall take into account the proper management of public funds, with the aim of avoiding duplication of work by such bodies.

Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

"Article 6

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative

reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest."

Article 4 of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds

"Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;*
- (b) species vulnerable to specific changes in their habitat;*
- (c) species considered rare because of small populations or restricted local distribution;*
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.*

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas

provided for in paragraphs 1 and 2 form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats."

Article 13(4) of 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)

"4. Programmes of measures established pursuant to this Article shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering 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 protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties."