



Natura 2000 and fishing

Application of Article 6
of the Habitats Directive and
Article 4 of the Birds Directive
to marine fishing activities

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Commission notice

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LIST OF ACRONYMS

BD	Birds Directive
BSAC	Baltic Sea Advisory Council
CFP	Common fisheries policy
CJEU	Court of Justice of the European Union
DCF	Data collection framework
EEZ	Exclusive economic zone
EIA	Environmental impact assessment
EMFAF	European, Maritime, Fisheries and Aquaculture Fund
EU	European Union
EUNIS	European nature information system
GIS	Geographical information systems
HD	Habitats Directive
IMO	International Maritime Organisation
IROPI	Imperative reasons of overriding public interest
LIFE	EU's funding instrument for the environment and climate action
MPA	Marine protected area
MSFD	Marine Strategy Framework Directive
NGO	Non-governmental organisation
pSCI	Proposed site of Community importance
SAC	Special area of conservation
SCI	Site of Community importance
SDF	Standard data form
SEA	Strategic environmental assessment
SPA	Special protection area
STECF	Scientific, Technical and Economic Committee for Fisheries
TFEU	Treaty on the functioning of the European Union
UNCLOS	United Nations Convention on the Law of the Sea
VMS	Vessel monitoring system

1. Introduction

Marine ecosystems are crucial to maintaining Earth's extraordinary web of life. Keeping them healthy and productive is also important for the climate and for society. The seas and oceans supply the air we breathe and the food we eat. However, the status of marine ecosystems in the European Union (EU) is not good and continues to deteriorate¹. Biodiversity loss and ecosystem collapse are currently among the greatest threats facing humanity². One of the main pressures on marine biodiversity comes from fishing³, which, in turn, is highly dependent on healthy and resilient ecosystems. Protecting and restoring marine ecosystems is therefore key to our fight against biodiversity loss and climate change, but also to securing the future of our coastal and fishing communities and producing high quality food.

The EU has a strong policy and legal framework for sustainable fishing and protecting and restoring marine ecosystems. The Marine Strategy Framework Directive (MSFD)⁴ provides a legal framework for ensuring clean, healthy and productive ocean and seas. Its aim is to achieve 'good environmental status' for marine waters and to protect, in a sustainable fashion, the resources on which economic and social activities depend. The Birds⁵ and Habitats⁶ Directives are the cornerstones of EU biodiversity policy. They protect habitat types and species of Community importance and have created the Natura 2000 network of protected areas. Meanwhile, the Regulation on nature restoration⁷ aims to achieve the long-term and sustained recovery of biodiverse and resilient ecosystems in the EU's land and sea areas, setting binding restoration targets for a series of ecosystems, including marine ecosystems.

Under the Habitats Directive, EU Member States are required to designate Natura 2000 sites for nine specific marine habitat types and 16 marine species. In addition, the Birds Directive identifies

¹ European Environment Agency, *Marine messages II. Navigating the course towards clean, healthy and productive seas through implementation of an ecosystem-based approach*, 2019; COM(2020) 259 final. Report from the Commission to the European Parliament and the Council on the implementation of the Marine Strategy Framework Directive (Directive 2008/56/EC).

² World Economic Forum, *The Global Risks Report 2020*, 2020.

³ IPBES, *Summary for policymakers of the global assessment report on biodiversity and ecosystem services (summary for policy makers)*. IPBES Plenary at its seventh session, IPBES 7, Paris, 2019, <https://doi.org/10.5281/zenodo.3553579>; Reports submitted by Member States under Article 17 of the Habitats Directive for the period 2013–2018.

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 (Marine Strategy Framework Directive) (Text with EEA relevance) (OJ L 164, 25.6.2008, p. 19–40).

⁵ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version) (OJ L 20, 26.1.2010, p. 7–25).

⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.07.1992, p. 7–50).

⁷ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (Text with EEA relevance) PE/74/2023/REV/1 (OJ L, 2024/1991, 29.7.2024).

60 bird species that depend on marine environment and require protection through the Natura 2000 network. To support Member States in this process, the Commission has issued Guidelines for the establishment of the Natura 2000 network in the marine environment⁸. To date, more than 3,000 marine Natura 2000 sites have been designated across the EU, covering over 9% of Member States' marine waters.

The EU's common fisheries policy (CFP), as laid down in the CFP Regulation⁹ and associated legislation, must implement the ecosystem-based approach to fisheries management to ensure that negative impacts of fishing activities on the marine ecosystem are minimised. It sets the legal framework for the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources, and aims to ensure that fisheries and aquaculture are environmentally sustainable and managed in a way that is consistent with the objectives of achieving economic, social and employment benefits.

The Maritime Spatial Planning Directive (MSPD)¹⁰ can support the planning for co-location of activities at sea, including fisheries and nature protection. When establishing and implementing maritime spatial planning, Member States must consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses.

The EU biodiversity strategy for 2030¹¹ is a comprehensive, ambitious and long-term plan to protect nature and reverse the deterioration of ecosystems. The strategy aims to put Europe's biodiversity on a path to recovery by 2030 and contains specific measures and commitments, including for marine ecosystems.

The EU action plan on protecting and restoring marine ecosystems for sustainable and resilient fisheries¹² seeks to ensure that the EU's environmental policy and the common fisheries policy are implemented more consistently. Building on the biodiversity strategy's commitment to legally protect 30% of our seas, one third of which should be strictly protected, it addresses the shortcomings identified in the European Court of Auditors' special report on the marine environment¹³ by focusing on marine protected areas (MPAs) and on how fisheries management can contribute to the more effective protection and restoration of marine biodiversity.

Article 6 of the Habitats Directive lays down rules governing the conservation and management of Natura 2000 sites designated under the Habitats Directive – sites of Community importance (SCIs) and special areas of conservation (SACs). Some of these rules also apply to special protection areas (SPAs) classified under the Birds Directive, together with Article 4 of that Directive.

⁸ European Commission: Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives, 2007, pp. 272, https://environment.ec.europa.eu/topics/nature-and-biodiversity/natura-2000/managing-and-protecting-natura-2000-sites_en

⁹ 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).

¹⁰ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135–145).

¹¹ COM(2020) 380 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU Biodiversity Strategy for 2030. Bringing nature back into our lives.

¹² COM(2023) 102 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU Action Plan: Protecting and restoring marine ecosystems for sustainable and resilient fisheries.

¹³ ECA, Special Report 26/2020. *Marine environment: EU protection is wide but not deep*, 2020, <https://op.europa.eu/webpub/eca/special-reports/marine-environment-26-2020/en/>

Commercial and recreational fishing activities can have a negative impact on habitats and species which are protected in Natura 2000 sites¹⁴. Compliance with Article 4 of the Birds Directive and Article 6 of the Habitats Directive may therefore require the regulation of any type of fishing activities in cases where they have a negative impact on marine habitats and species for whose protection the SCIs, SACs and SPAs have been designated.

The Commission has published guidance on setting up conservation measures under the CFP for Natura 2000 sites and MSFD relevant measures¹⁵. That guidance document focussed on the procedure under the CFP for introducing conservation measures, but not on the substantive obligations under Article 4 of the Birds Directive and Article 6 of the Habitats Directive. Aquaculture activities are covered by other guidelines¹⁶.

This Commission notice is therefore intended to help Member States to correctly implement the provisions of Article 4 of the Birds Directive and Article 6 of the Habitats Directive for management of Natura 2000 sites as regards commercial and recreational marine fishing activities. It draws on the general guidance on the application of Article 6 of the Habitats Directive¹⁷ and the methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive¹⁸ and should be read in conjunction with those documents.

The Court of Justice of the European Union (CJEU) ensures the uniform application and interpretation of EU law. Its rulings have played an important role in the implementation and interpretation of the Habitats and Birds Directives. Key rulings relevant to the application of Articles 6(1), 6(2), 6(3) and 6(4) of the Habitats Directive and Article 4 of the Birds Directive, including in relation to fishing activities, are highlighted throughout this document. The full texts of all rulings are available from <http://curia.europa.eu>.

This document reflects the views of the Commission only and is of a non-legally binding nature. It rests with the Court of Justice of the EU to provide definitive interpretations of EU law.

¹⁴ According to the data submitted by Member States under Article 17 of the Habitats Directive for the period 2013-2018, fishing and aquaculture are the highest-ranked source of pressure on marine species and habitats.

¹⁵ SWD(2018) 288 final. 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, [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2018\)288&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2018)288&lang=en)

¹⁶ European Commission: Directorate-General for Environment, *Guidance on aquaculture and Natura 2000 – Sustainable aquaculture activities in the context of the Natura 2000 Network*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/34131>.

¹⁷ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>.

¹⁸ Commission notice, *Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC* 2021/C 437/01 (OJ C, C/437, 28.10.2021, p. 1–107, CELEX: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC1028\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC1028(02))).

2. Applying Article 6 of the Habitats Directive and Article 4 of the Birds Directive to fishing activities

2.1. THE LEGAL FRAMEWORK

Article 6 of the Habitats Directive contains three sets of provisions establishing the main framework for managing SACs under the Habitats Directive:

Article 6(1) requires that Member States establish the necessary conservation measures.

Article 6(2) lays down the obligation to avoid habitat deterioration and significant disturbance of species.

Articles 6(3) and (4) contain specific rules which apply when plans and projects are proposed that are likely to have a significant effect on a Natura 2000 site.

Article 4 of the Birds Directive contains similar rules to Article 6(1) of the Habitats Directive, and Article 7 of the Habitats Directive makes the rules in its Article 6(2), (3) and (4) applicable to SPAs under the Birds Directive.

Widespread fishing activities were taking place before many Natura 2000 sites were designated. The scope, time and place of fishing activities can also change. For example, they can target new species or start using new fishing gear. Therefore, they are likely to constitute a pressure and a threat for habitats and species protected in those sites.

To help establish an effective framework for considering fishing activities in the context of Article 6 of the Habitats Directive and Article 4 of the Birds Directive, the relevant obligations arising from these rules are listed below, together with references to specific chapters in this guidance document (see Figure 1).

This guidance proposes the following steps to ensure compliance with Article 6 of the Habitats Directive and Article 4 of the Birds Directive:

As a **first step**, Member States should identify, based on the best consolidated scientific data, the fishing activities that are likely to pose a risk of deterioration to habitat types or habitats of species and/or a risk of significant disturbance to the species protected in Natura 2000 sites.

Member States should take appropriate measures to avoid the deterioration of habitats and significant disturbance of species as soon as the site is proposed for designation as an SCI or classified as an SPA (see chapter 4 on Article 6(2)).

As a **second step**, Member States should consider possible necessary additional measures, going beyond merely ensuring avoidance of deterioration of habitats or significant disturbance of species, to achieve the site's conservation objectives (see chapter 3 on Article 6(1)).

For SCIs, Member States should complete the second step at the time the sites are designated SACs, which must take place within six years of the site being designated an SCI at the latest.

For SPAs, these two steps should be taken at the same time because the Birds Directive requires conservation measures to be taken as soon as the site is classified.

If fishing activities are considered to be plans or projects affecting the site and not directly connected with or necessary to the management of the site, they have to be assessed according to a specific procedure (see chapter 5 on Article 6(3)).

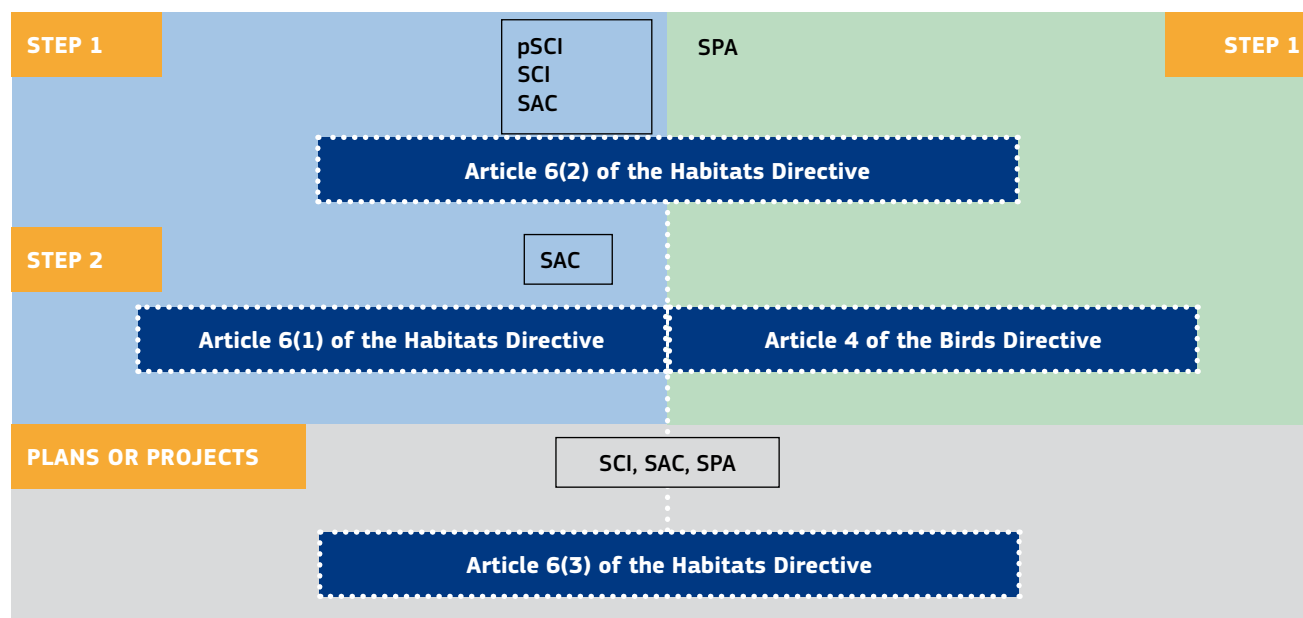


Figure 1. Steps for implementing Article 6 of the Habitats Directive (HD) and Article 4 of the Birds Directive (BD), in relation to fishing activities.

2.1.1. Example 1: Dredging in a reef habitat

In a SAC designated for the protection of a certain sub-type of the reefs habitat type, there are ongoing fishing activities with dredges which are known to be very damaging for this habitat type. To avoid degrading the habitat and comply with Article 6(2), in the area where the habitat type exists these fishing activities should be regulated.

In that example, if the conservation objectives for this site require enlargement of the specific habitat area in the site, to help achieve favourable conservation status for the 'Reef' habitat type in that Member State's biogeographical region, to comply with Article 6(1) of the Directive, as a first necessary conservation measure, the Member State could place new stone boulders to enlarge the area of suitable substrate in the site. To enable the gradual establishment of the new biological community constituting that habitat type on these new boulders, fishing activities with dredges would also have to be prohibited in this other part of the site.

2.1.2. Example 2: Fishing in the feeding area of marine mammals

In a SAC designated for protecting certain marine mammals, there are ongoing fishing activities in the feeding areas to catch their prey. To comply with Articles 6(1) and 6(2), these fishing activities should therefore be regulated, to avoid deterioration in the habitat and a reduction in food availability for the species, to increase the food availability for the species to meet relevant conservation objectives, and to prevent their incidental capture in fishing gear.

2.1.3. Example 3: Fishing permits

Sometimes fishing permits are issued or renewed by a Member State allowing specific fishing activities during a specified period in a given area or for a given fishery under specific conditions. If such fishing activities are likely to have a significant impact on Natura 2000 sites, those permits should be subject to the procedure required by Article 6(3) of the Habitats Directive.

3. Applying Article 6(1) of the Habitats Directive and Article 4 of the Birds Directive to fishing activities

Article 6(1) of the Habitats Directive

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.

Article 6(1) lays down a general conservation regime which must be established by the Member States for all SACs.

This Article requires the implementation of necessary conservation measures to achieve site-specific conservation objectives. The goal is to help maintain or restore the natural habitats and the populations of species of wild fauna and flora present in the SAC to a favourable conservation status, at national biogeographical level.

Site-specific conservation objectives are therefore a set of specified objectives that should be met in a site to ensure that the site makes the best possible contribution to achieving favourable conservation status at national biogeographical level for the habitat types from Annex I and the species from Annex II that are present on the site.

Similarly, under Article 4 of the Birds Directive, special protection measures must be taken for birds protected in SPAs, with the objective of contributing to their maintenance or recovery to secure status.

Article 4 of the Birds Directive

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.¹⁹

3.1. WHEN DOES ARTICLE 6(1) OF THE HABITATS DIRECTIVE APPLY?

1. Article 6(1) applies to all SACs and to all natural habitat types listed in Annex I and habitats of species in Annex II present on the sites, except for those identified as non-significant in the Natura 2000 standard data form (SDF)²⁰.
2. The designation of an SCI as an SAC, which must happen within six years from the designation as SCI, effectively triggers the implementation of Article 6(1).
3. Article 6(1) also applies to SCIs for which the six-year period has expired, and which have not yet been designated as SACs²¹.

¹⁹ Obligations arising under Article 6 (2), (3) and (4) of this Directive replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.

²⁰ Commission Implementing Decision (EU) 2023/2806 of 15 December 2023 concerning a site information format for Natura 2000 sites (notified under document C(2023)8623) (OJ L, 2023/2806, 8.12.2023).

²¹ European Commission: Directorate-General for Environment, Managing Natura 2000 sites – *The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 1.4, pages 11–12.

3.2. WHAT ARE THE 'ECOLOGICAL REQUIREMENTS OF HABITATS AND SPECIES'?

1. Ecological requirements involve all ecological needs which are deemed necessary to ensure the conservation of the habitat types and species protected under the Habitats Directive.
2. These ecological requirements include both abiotic and biotic factors. They should be based on best consolidated scientific knowledge and can only be defined on a case-by-case basis. The ecological requirements may vary from one species to another, but also for the same species, from one site to another and throughout its life cycle.
3. It is the responsibility of the Member States to identify the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

Examples of ecological requirements

The ecological requirements of marine mammals are, for example, those linked to the quality of the habitat, including the maximum levels of underwater noise or contaminants, the food quality and availability, or specific needs for reproduction or rearing young.

The ecological requirements of *Posidonia* beds²² are, for example, the water temperature that the plant endures (from approximately 10°C to 29°C), water quality (the need for transparent, oligotrophic and oxygenated waters to survive), the minimum light requirements (0.1 - 2.8 mol PAR photons day⁻¹ m⁻²), salinity (from 33‰ to 39‰), the underwater substrate for anchorage and nutrient uptake.

They also include the ecological requirements of typical species that depend on *Posidonia* meadows, such as micro- and macroalgae, hydroids, bryozoans, foraminifera, molluscs, crustaceans, sea urchins and fish species.

3.3. HOW TO ESTABLISH SITE-SPECIFIC CONSERVATION OBJECTIVES?

1. Site-specific conservation objectives should be established for SACs under the Habitats Directive and for SPAs under the Birds Directive²³.
2. Site-specific conservation objectives should be based on the ecological requirements of the natural habitat types and species present on the site. The objectives should define the desired conservation condition of habitats and species on the site by using specific attributes²⁴ and targets. Historical data on condition of habitats before industrial fisheries could be useful for setting conservation objectives.
3. They should reflect the importance of the site for the maintenance or restoration of the habitat types and species present on the site at favourable conservation status at national biogeographical level and for the coherence of the Natura 2000 network.
4. Moreover, they should reflect the threats of degradation or destruction to which the habitats and species on the site are exposed, including those brought about by climate change.
5. The establishment of site-specific conservation objectives is important in terms of establishing the necessary conservation measures for SACs under Article 6(1) of the Habitats Directive and conservation measures for SPAs under Article 4 of the Birds Directive, and for the screening and appropriate assessment of plans and projects under Article 6(3). Conservation objectives

²² European Commission: Directorate-General for Environment, Díaz-Almela, E. and Duarte, C., *Management of Natura 2000 habitats Posidonia beds (Posidonium oceanicae) 1120 – Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora*, European Commission, 2008, <https://data.europa.eu/doi/10.2779/48444>

²³ With a view to achieving the requirements set out in Articles 2, 3, 4(1), 4(2) and 4(4) of that Directive.

²⁴ Attributes are specific characteristics that define the conservation condition of the habitat or the species based on their ecological requirements.

define the site-specific goals for maintaining or restoring a habitat or species to a favourable conservation status, while conservation measures are the actions taken to achieve those goals. They are therefore essential to achieving the overall aim of the Directive. The purpose of the appropriate assessment is to assess the implications of plans or projects in terms of the site's conservation objectives, which play an important role in the management of the site.

For examples of site-specific conservation objectives from different Member States, see annex 1.

3.4. WHAT ARE THE 'NECESSARY CONSERVATION MEASURES'?

1. Conservation measures are the actual mechanisms and actions that must be taken in a Natura 2000 site to achieve the site's conservation objectives and addressing the pressures and threats facing the species and habitats within the site²⁵.
2. In the context of Article 6(1), conservation measures may be taken within the framework of a site management plan and can include statutory, administrative, or contractual measures²⁶.
3. The conservation measures needed to maintain or restore a favourable conservation status at national biogeographical level for the protected habitats and species within the site concerned do not just need to be adopted, but they also, above all, need to be implemented²⁷. This follows from Article 1(l) of the Habitats Directive, which defines a SAC as an SCI in which conservation measures are 'applied' and by the eighth recital of the directive, according to which it is appropriate, in each area designated, to 'implement' the necessary measures having regard to the conservation objectives pursued.
4. The obligation is to establish the necessary conservation measures, irrespective of whether those measures are applied within individual sites, or even in some cases outside the boundaries of sites (where necessary) or across multiple sites. This may be particularly relevant to marine sites, where, for example, wider regulation of fishing activities may be a significant element of compliance with Article 6(1). The suitability of such wider measures must be checked against the conservation objectives of the specific site and the local impacts of fishing activities and, if necessary, complemented with additional measures.
5. As regards fishing activities, appropriate conservation measures include regulating catches, fishing effort and setting technical measures such as closures, gear adaptations and minimum sizes for species or use of alternative gear. It is good practice in defining the necessary conservation measures to consult and involve stakeholders, whose activities might be regulated, at an early stage in the decision-making process. This requires timely and effective involvement and participation by fishers and their organisations in the development and implementation of conservation measures. This should lead to a greater sense of ownership and commitment of fishers for long-term implementation of the measures (see for example annex 2).
6. In addition, Member States should estimate the socio-economic impacts and benefits of conservation measures on fisheries. To mitigate or compensate potential negative socio-economic impacts, where eligible, Member States can support conservation measures with the

²⁵ For more information about key elements to consider when establishing and implementing conservation measures, see chapter 2.3.2. of the guidance document European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>.

²⁶ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 2.4, pages 21–23.

²⁷ Judgment of the Court (Grand Chamber) of 17 April 2018, *European Commission v Republic of Poland*, C-441/17, ECLI:EU:C:2018:255, paragraph 213.

use of financial support and incentives, or include actions in their Programmes funded under the European Maritime, Fisheries and Aquaculture Fund (EMFAF). The LIFE programme can also be used to support certain activities.

7. It is important to ensure regular and robust monitoring of the condition of habitats and species protected in the site, as well as adequate monitoring of effectiveness of conservation measures, to enable adaptation of measures, if necessary.
8. It is equally important to ensure compliance with and enforcement of conservation measures through effective monitoring, control and surveillance of activities in the site and of any fishing activities in accordance with the Control Regulation²⁸. Together with communication, information sharing and cooperation with sea-users, this should ensure effective implementation of established conservation measures as required by Article 6(1). See for example annex 3.

Example of conservation measures (fisheries management measures)

The report of Germany on the conservation status of species and habitats protected under the Habitats Directive for the 2013-2018 reporting period showed that the habitat types Sandbanks (1110) and Reefs (1170) in the marine Baltic biogeographical region have an unfavourable conservation status. Consequently, measures aimed at improving their conservation status in Natura 2000 sites under the provisions of Article 6(1) of the Habitats Directive have to be implemented in the form of fisheries management measures under Articles 11 and 18 of the CFP Regulation.

On 7 September 2022, having consulted the Baltic Sea Advisory Council (BSAC), Germany (as initiating Member State) together with Denmark, Estonia, Latvia, Lithuania, Poland, Finland and Sweden, submitted to the Commission a proposal regarding fisheries conservation measures to protect sandbanks and reefs from the impact of mobile bottom-contacting gear in five SACs.

The measures entail a year-round exclusion of fisheries with mobile bottom-contacting gear in some areas of the Fehmarn Belt, the Kadet Trench, the Pomeranian Bay with Odra Bank, as well as in the entire SACs of Western Rønne Bank and Adler Ground. The measures were adopted as a Commission delegated regulation²⁹.

For more details, see annex 4.

²⁸ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union 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).

²⁹ Commission delegated regulation (EU) 2024/2943 of 17 September 2024 amending Delegated Regulation (EU) 2017/117 as regards fisheries conservation measures in the Baltic Sea areas of Fehmarnbelt, Kadetrinne, Westliche Rönnebank, Adlergrund and Pommersche Bucht mit Oderbank. C/2024/6432. (OJ L, 2024/2943, 28.11.2024).

3.5. HOW DOES ARTICLE 4 OF THE BIRDS DIRECTIVE APPLY TO SPECIAL PROTECTION AREAS?

1. Article 6(1) does not apply to SPAs under the Birds Directive. However, equivalent rules apply to SPAs under Article 4(1) and (2) of the Birds Directive. The Birds and Habitats Directives pursue the common objective of protecting biodiversity through the conservation of habitats and species and achieving favourable conservation status of habitats and species in the EU. The Court held that interpretations of the Birds Directive and the Habitats Directive should not diverge, subject to their specific features, due to the similar considerations they entail³⁰. Their overarching objectives should therefore be interpreted in a consistent way.
2. In particular, according to Article 3(1) of the Habitats Directive, both SACs under the Habitats Directive and SPAs under the Birds Directive are to contribute to a coherent European ecological network (Natura 2000). This network of SACs and SPAs “shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range”.
3. Article 4(1) and (2) of the Birds Directive requires the Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the Directive and regularly occurring migratory species not listed in that Annex³¹. Member States are required to adopt special conservation measures for the habitat of birds protected in the sites.
4. The Court already held that Member States must set conservation objectives, including the objective specific to the population and habitat of bird species protected in SPAs, and to adopt and implement conservation measures corresponding specifically to the ecological needs of those species³². The concepts described in this chapter, in particular those related to the conservation objectives and conservation measures, should therefore also apply to SPAs.

³⁰ Judgment of the Court (First Chamber) of 23 April 2020, *European Commission v Republic of Finland*, C-217/19, ECLI:EU:C:2020:291, paragraph 84.

³¹ Judgment of the Court (Second Chamber) of 14 October 2010, *European Commission v Republic of Austria*, C-535/07, EU:C:2010:602, paragraph 56 and the case-law cited.

³² Judgment of the Court (First Chamber) of 12 September 2024, *Elliniki Ornithologiki Etaireia and Others v Ypourgos Esoterikon and Others. Request for a preliminary ruling from the Symvoulío tis Epikrateias*, Case C-66/23, ECLI:EU:C:2024:733, paragraphs 40 to 50.

4. Applying Article 6(2) of the Habitats Directive to fishing activities

Article 6(2) of the Habitats Directive

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.

The legal regime under Article 6(2) must be specific, consistent and complete, and capable of effectively protecting the sites concerned.

Member States enjoy discretion when taking appropriate steps to implement Article 6(2), provided it is guaranteed that no deterioration or significant disturbance will occur³³.

4.1. WHEN DOES ARTICLE 6(2) OF THE HABITATS DIRECTIVE APPLY?

1. Article 6(2) applies permanently to all SCIs, SACs and SPAs and covers past, present or future activities and events.
2. Member States are required to take preventive measures to avoid deterioration of habitats and significant disturbance of species connected with a predictable event, activity or process.
3. The preventive measures apply to all species and habitats for which the sites have been designated, and should also be implemented, if necessary, outside the sites³⁴.
4. Fishing activities may fall within the scope of Article 6(2) if these activities are likely to cause deterioration of natural habitats or significant disturbance of species for which a site has been designated.
5. These may be ongoing fishing activities both within and outside a Natura 2000 site, if there is a risk of causing deterioration of habitats or significant disturbance of species.

³³ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.2, page 27.

³⁴ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.2, pages 26–27.

6. Article 6(2) applies to all kinds of fishing activities, both recreational and commercial, regardless of the basis on which permits or licences, if any, were issued and regardless of whether the potential impact of such an activity is intentional or unintentional³⁵.

4.2. WHAT ARE 'DETERIORATION' AND 'SIGNIFICANT DISTURBANCE'?

1. The ecological characteristics of a Natura 2000 site must not be allowed to deteriorate below their level at the time of designation. In case a better condition has been achieved, this improved condition should be the reference.
2. When fishing entails a probability or risk that it might cause significant disturbance to species or deterioration of a natural habitat or a habitat of a species, the protection provided for in Article 6(2) applies and Member States must take appropriate steps to avoid such risks.
3. For habitats, deterioration occurs on a site when the area covered by the habitat type is reduced, or the specific structure and functions necessary for the long-term maintenance of that habitat or the status of the species associated with it are reduced in comparison to their initial or restored condition³⁶. The requirement to avoid deterioration applies not just to the habitat types listed in Annex I to the Habitats Directive for which the site has been designated, but also to the habitats of the species listed in Annex II to the Habitats Directive and Annex I to the Birds Directive, and the habitats of the migratory species covered by Article 4(2) of the Birds Directive, for which the site has been designated³⁷.
4. For species, significant disturbance occurs when an activity contributes to the long-term decline of the population or the reduction, or the risk of reduction, of its range, and reduction of the available habitat³⁸.
5. Deterioration and significant disturbance must be assessed against the conservation objectives of the site. This notion should be interpreted in a dynamic way, according to the evolution of the condition of the habitat or of the status of the species in that site. Where site-specific conservation objectives require improvements in the condition of habitats (or their re-establishment) or improvements in population numbers for species in the site, this should be specifically considered.
6. Whenever needed, including in cases where fishing activities were regularly occurring in the area before the designation of sites, preventive measures should be put in place at the time of site designation, to avoid deterioration of habitats and significant disturbance of species in the sites.
7. To ensure that the rules in Article 6(2) are effective, preventive measures must be taken to avoid deterioration of habitats in good condition but also to avoid further deterioration of already damaged habitats that are not in good condition. Moreover, it would be incompatible with the aim of the Birds and Habitats Directives to keep the protected habitats in Natura 2000 sites permanently in not good condition. Since the Natura 2000 network is the main tool for

³⁵ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.2, page 26.

³⁶ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.5.1, pages 29–30.

³⁷ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.5.1, pages 29–30.

³⁸ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.5.2, pages 30–31.

achieving favourable conservation status according to Article 3(1) of the Habitats Directive, measures taken under Article 6(2) of the Directive must therefore enable the recovery to good condition of the habitats in the sites, where such recovery is the result of the conservation measures taken under Article 6(1) of that Directive and Article 4 of the Birds Directive.

8. In the case of sites hosting habitats that are not in good condition due to damaging fishing activities regularly occurring in the site, measures under Article 6(2) should take account of the fact that the recovery of habitats starts right after the damaging activity has ceased, although recovery may not be noticeable immediately. Consequently, Member States are obliged to take preventive measures under Article 6(2) and avoid any further occurrence of such damaging activities that would result in the continuous deterioration of the habitats in the sites or in those habitats remaining permanently in poor condition.
9. The same prevention principle applies to significant disturbance of species.

Example of deterioration linked to structure and function of habitats

Overfishing of large predatory fish can cause changes in coastal food webs which can lead to deterioration of habitats and loss of their structure and function. For example, since the 1980s, in Swedish waters, mats of filamentous macroalgae have increased dramatically in shallow coastal areas, and at the same time more than 60% of eelgrass has vanished (eelgrass is seagrass that is characteristic of several habitat types such as 'Sandbanks which are slightly covered by sea water all the time', 'Coastal lagoons' or 'Large shallow inlets and bays')³⁹.

Both nutrient pollution and overfishing are considered the main reasons for this change. The loss of large predators in the coastal ecosystem due to fishing is thought to have caused a trophic cascade, releasing filamentous macroalgae from grazing control, which caused them to bloom and form large mats in high nutrient conditions, with negative effects on eelgrass growth.

To overcome these problems and shift the system back to a state dominated by eelgrass, multiple measures would be required that would allow the return of large fish predators to the coastal ecosystems, which would be likely to involve both increased regulation of fishing and nutrient pollution, as well as restoration of eelgrass.

³⁹ See for example: Infantes, E., Crouzy, C., Moksnes, P.-O., *Seed Predation by the Shore Crab *Carcinus maenas*: A Positive Feedback Preventing Eelgrass Recovery?*, PLoS ONE Vol. 11, Issue 12, 2016, e0168128, <https://doi.org/10.1371/journal.pone.0168128>

Example of significant disturbance linked to bycatch in fishing gear

The loggerhead turtle, *Caretta caretta*, was reported to be in unfavourable conservation status in the Mediterranean Sea and its population has been declining since the last reporting period (2013–2018). Several Natura 2000 sites designated for the loggerhead turtle in the Mediterranean Sea have been identified as being subject to high pressure from fishing. Moreover, high numbers of incidental catches of loggerhead turtles in fishing gear (bycatch) have been reported for the waters in and around these sites.

Bycatch can result in the killing of turtles and studies have shown that, even when animals seem to have survived the capture, there is a significant likelihood of them dying after being released.

To determine whether bycatch of loggerhead turtles would constitute a significant disturbance in a site, it is necessary to perform a detailed examination of the effects of such incidental capture and killing on i) the achievement of the site's conservation objectives, ii) the population of the species in and around the site, and iii) the achievement or maintenance of its favourable conservation status at national biogeographical level.

The impact can be deemed significant if a species is in unfavourable conservation status and incidental capture and killing could contribute, or increase the risk, of the long-term decline of the population of the species or the reduction of its range.

The impact should also be assessed as significant if there is a regular and large number of animals caught and killed incidentally, which could affect a subpopulation or local population of the species in the site in such a way as to compromise the achievement of the site's conservation objectives.

4.3. HOW TO ESTABLISH WHETHER FISHING ACTIVITIES ARE LIKELY TO CAUSE DETERIORATION OF HABITATS AND SIGNIFICANT DISTURBANCE OF SPECIES?

1. To determine whether fishing activities are likely to cause deterioration of habitats or significant disturbance of species in a Natura 2000 site, their potential impact must be assessed against the site-specific conservation objectives. For this, it is first necessary to obtain the information regarding the habitat types and species protected in the site⁴⁰ and fishing activities conducted or likely to be conducted in the future, inside and around the site. This includes the information at site level regarding the area and the condition of habitats and populations of species, as well as information on the use of fishing gear (spatial and temporal fishing effort) and its potential impacts. It is therefore necessary to keep the information in the SDFs accurate and up-to-date, and to perform regular monitoring of the condition of habitats and species and the pressures present in the site.
2. The information should be gathered using the best available techniques (i.e. *in situ* or remote monitoring), methods (satellites, tracking devices for fishing boats, on-board observers) and approaches (i.e. GIS, predictive models, etc.). This information is crucial to implementing Article 6(2) and should be available before or soon after the designation of the site.
3. Member States collect biological, environmental, economic, and social data in the fisheries sector to support the CFP. The EU's data collection framework (DCF)⁴¹ sets out the basic principles and the general rules on the collection, management and use of data, in line with

⁴⁰ Habitats listed in Annex I, species listed in Annex II of the Habitats Directive and Annex I of the Birds Directive as well as regularly occurring migratory birds present in the site should be listed in the Natura 2000 standard data form (SDF).

⁴¹ Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008 (recast) (OJ L 157, 20.6.2017, p. 1–21).

the CFP. There is a clear obligation for Member States to make data available to end-users of scientific data, including bodies designated by the Commission⁴². Fishing activity data, including vessel position data collected according to the Control Regulation⁴³, can be provided to independent scientific bodies, for the purpose of performing scientific research or providing scientific advice, following data calls to the relevant national authorities⁴⁴, and according to the processing, management and use requirements of the DCF and other relevant legislations on data protection and confidentiality.

4. This information should then be used to compile conflict matrices for each site, describing whether each type of fishing gear poses a risk of impacting and causing deterioration of habitats or significant disturbance of species protected in the site.
5. To facilitate this assessment for habitat types containing many subtypes, it is recommended to break the habitats down to the finest scale possible (for example level 4 or 5 of the EUNIS⁴⁵ habitat classification system). The same may be necessary for fishing gear (for example at metier⁴⁶ level 6).
6. Some Member States have developed detailed risk assessment matrices (see annex 5.1) which they use to facilitate the implementation of necessary fisheries management measures aimed at ensuring compliance with Article 6(2) of the Habitats Directive. An approach to risk assessment was also proposed at EU level by the Marine Expert Group (see annex 5.2). In the absence of national approaches, the risk assessment developed at EU level can be used as a starting point.
7. The application of such risk assessment matrices makes it possible to identify fishing gear which is likely to cause deterioration of habitats or significant disturbance of species. The likely impact should then be assessed in light of site-specific conservation objectives (see chapter 3, annex 1). If a fishing activity is likely to cause deterioration of habitats or significant disturbance of species protected in the site, then a Member State must take appropriate steps to avoid such deterioration or significant disturbance by putting in place the necessary fisheries management measures.
8. In the event of uncertainty, for example due to a lack of data regarding habitats or species, fishing effort or the impact of certain fishing gear, the precautionary approach should be applied until sufficient data is collected. This means that, until the effects of a fishing activity on the protected habitats or species became fully apparent, protective measures such as restriction or prohibition of fishing may be considered necessary⁴⁷. This is in line with a precautionary approach to fisheries management under the CFP⁴⁸ whereby the absence of adequate scientific

⁴² For more information see: https://dcf.ec.europa.eu/index_en

⁴³ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union 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).

⁴⁴ Article 110 of Council Regulation (EC) No 1224/2009.

⁴⁵ European Nature Information System, see <https://eunis.eea.europa.eu>

⁴⁶ Metier: combination of fishing gear and target species.

⁴⁷ See Judgment of the Court (Second Chamber) of 2 September 2010, *Panagiotis I. Karanikolas and Others v Ypourgos Agrotikis Anaptyxis kai Trofimon and Nomarchiaki Aftodioikisi Dramas, Kavalas, Xanthi*, C-453/08, ECLI:EU:C:2010:482, paragraphs 48 to 49;

Judgment of the Court (First Chamber) of 29 July 2024, *Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v Administración de la Comunidad de Castilla y León*, C-436/22, ECLI:EU:C:2024:656, paragraphs 73 to 74; Judgment of the Court (Fourth Chamber) of 4 October 2024, *Biohemp Concept SRL v Direcția pentru Agricultură Județeană Alba*, C-793/22, ECLI:EU:C:2024:837, paragraph 56.

⁴⁸ Article 4(1)8 of Regulation (EU) No 1380/2013.

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.

4.4. WHAT ARE ‘APPROPRIATE STEPS’?

1. Directly applicable regulatory measures are required for all Natura 2000 sites where fishing activities occur and are demonstrated to risk causing deterioration of the habitats or significant disturbance of the species for which the sites have been designated⁴⁹.
2. It is not acceptable to wait until deterioration or disturbance occurs before taking measures and Member States need to take all appropriate actions to ensure that no deterioration or significant disturbance occurs.
3. If the negative impact has already occurred, that impact must be eliminated, if appropriate by stopping the activity and/or by taking mitigation and restoration measures⁵⁰.
4. Voluntary agreements, such as a code of practice for fishing in a Natura 2000 site, are likely to be insufficient to constitute fulfilment of obligations under Article 6(2), and so is a risk assessment process, which identifies the measures needed but does not provide them with a statutory basis. The Court found that a failure to adopt legally binding protective measures against certain activities causing deterioration of habitats in the sites, is a breach of Article 6(2) of the Habitats Directive⁵¹. The Court also found that powers to allow competent authorities to enter into site management agreements with owners or occupiers of sites were not considered sufficient to implement Article 6(2) as they were non-mandatory⁵².

Examples of application of Article 6(2) to fishing activities

In summer 2014, to ensure adequate protection of protected reef structures (habitat type 1170) from fishing activities and thereby (i) contribute to the obligation of achieving favourable conservation status and (ii) contribute to complying with Article 6(2) of the Habitats Directive, Denmark – together with Sweden and Germany – took action in seven sites under its sovereignty in the Baltic Sea.

The conservation status of the reef structures in the seven sites is ‘unfavourable’ due to physical disturbances and a relatively high level of nutrients in the water column. According to the Natura 2000 management plans for the seven sites, fishing with mobile bottom-contacting gear is specified as a threat to reef structures and a possible threat to sandbanks.

On 13 March 2015, Denmark, Germany and Sweden submitted to the Commission a proposal for fisheries conservation measures to protect reef structures in Danish Natura 2000 sites in the Baltic Sea by prohibiting all fishing activity with bottom-contacting gear in the restricted areas. These measures were adopted by the Commission in a delegated act⁵³.

For more details, see annex 6.

⁴⁹ Judgment of the Court (Second Chamber) of 4 March 2010, *European Commission v French Republic*, C-241/08, ECLI:EU:C:2010:114, paragraphs 30 to 39.

⁵⁰ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 3.1, page 26.

⁵¹ Judgment of the Court (Third Chamber) of 14 November 2024, *European Commission v Federal Republic of Germany*, Case C-47/23, ECLI:EU:C:2024:954, paragraphs 111–116.

⁵² See Judgment of the Court (Second Chamber) of 20 October 2005, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, C-6/04, ECLI:EU:C:2005:626, paragraphs 35 to 38.

⁵³ Commission Delegated Regulation (EU) 2017/117 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778. C/2016/5562. (OJ L 19, 25.1.2017, p. 1–9).

5. Applying Article 6(3) of the Habitats Directive to fishing activities

Article 6(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.

Article 6(3) defines a step-wise procedure for considering plans and projects that may have a significant effect on a Natura 2000 site. Activities not falling within the scope of Article 6(3) will still have to be compatible with the provisions of Article 6(2) of the Habitats Directive⁵⁴.

The first part of this procedure consists of a pre-assessment stage ('screening') to determine whether, firstly, the plan or project is directly connected with or necessary for the management of the site, and secondly, whether it is likely to have a significant effect on the site. The second part of the procedure relates to the appropriate assessment in view of the site's conservation objectives and the third relates to the decision of the competent national authorities.

⁵⁴ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4, pages 33–34.

5.1. WHEN DOES ARTICLE 6(3) OF THE HABITATS DIRECTIVE APPLY?

1. Article 6(3) applies permanently to all SCIs, SACs and SPAs.
2. It applies to:
 - activities that do not require authorisation, but are likely to have a significant effect on a site⁵⁵;
 - interventions in the natural environment including regular activities aimed at utilising natural resources⁵⁶;
 - recurring activities which are carried out periodically⁵⁷;
 - the intensification of an activity⁵⁸;
 - modifications of plans and projects⁵⁹;
 - activities outside the site but likely to have a significant effect on it⁶⁰;
3. There can be no general exemption of certain activities⁶¹.

⁵⁵ Judgment of the Court (Second Chamber) of 10 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-98/03, ECLI:EU:C:2006:3, paragraphs 43 to 52.

⁵⁶ Judgment of the Court of 24 October 1996, *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland*, C-72/95, ECLI:EU:C:1996:404 paragraphs 30 to 31;

Judgment of the Court (Grand Chamber) of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:482, paragraph 26.

⁵⁷ Judgment of the Court (Grand Chamber) of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:482, paragraphs 27 to 29;

Judgment of the Court (Second Chamber) of 14 January 2010, *Stadt Papenburg v Bundesrepublik Deutschland*, C-226/08, ECLI:EU:C:2010:10, paragraphs 50 to 51.

⁵⁸ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.4.1, page 36.

⁵⁹ Judgment of the Court (Grand Chamber) of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:482, paragraph 28;

Judgment of the Court of 24 October 1996, *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland*, C-72/95, ECLI:EU:C:1996:404, paragraphs 36 to 42.

⁶⁰ Judgment of the Court (Second Chamber) of 10 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-98/03, ECLI:EU:C:2006:3, paragraph 51;

Judgment of the Court (Second Chamber) of 13 December 2007, *Commission of the European Communities v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraphs 232 to 233;

Judgment of the Court (Second Chamber) of 26 April 2017, *European Commission v Federal Republic of Germany*, C-142/16, ECLI:EU:C:2017:301, paragraph 29.

⁶¹ E.g. Judgment of the Court (Fifth Chamber) of 6 April 2000, *Commission of the European Communities v French Republic*, C-256/98, ECLI:EU:C:2000:192, paragraph 39;

Judgment of the Court (Second Chamber) of 20 October 2005, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, C-6/04, ECLI:EU:C:2005:626, paragraphs 51 to 56;

Judgment of the Court (Second Chamber) of 4 March 2010, *European Commission v French Republic*, C-241/08, ECLI:EU:C:2010:114, paragraph 55;

Judgment of the Court (Second Chamber) of 13 December 2007, *Commission of the European Communities v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraph 244;

Judgment of the Court (First Chamber) of 26 May 2011, *European Commission v Kingdom of Belgium*, C-538/09, ECLI:EU:C:2011:349, paragraphs 41 to 45.

4. The size of the project is not relevant⁶².
5. Assessment of the plan does not exempt the individual projects from undergoing assessments. In all cases, a key limiting factor under Article 6(3) is whether or not there is likely to be a significant effect on a site.

Article 6(3) is therefore applicable to fishing activities which are likely to have a significant effect on a site to the extent that the achievement of the site's conservation objectives would be compromised.

5.2. WHAT ARE 'PLANS' AND 'PROJECTS'?

1. The term 'plan' has a broad meaning, including land-use or spatial plans and sectoral plans or programmes⁶³. In the context of fishing activities, plans to be considered include, for example, maritime spatial plans pursuant to Directive 2014/89/EU⁶⁴ if they include fishing activities or specific fisheries management plans.
2. Fisheries management plans, which Member States must consider, include for example, management plans for fisheries conducted by trawl nets, boat seines, shore seines, surrounding nets and dredges within Member States' territorial waters, adopted by Member States under Article 19 of the Mediterranean Regulation⁶⁵, if they are likely to have a significant effect on a Natura 2000 site in view of its conservation objectives⁶⁶.
3. As to the legal standard for the 'project', the Court adopts an extremely wide interpretation that includes all projects within the meaning of the Environmental Impact Assessment Directive (EIA Directive)⁶⁷ and even extends to any activity likely to have significant effects on a protected site⁶⁸. The Court already ruled that the grazing of cattle and the application of fertilisers on the

⁶² Judgment of the Court (Second Chamber) of 10 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-98/03, ECLI:EU:C:2006:3, paragraph 44; Judgment of the Court (Second Chamber) of 13 December 2007, *Commission of the European Communities v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraph 244.

⁶³ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.4.2, pages 36–37.

⁶⁴ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135–145).

⁶⁵ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11–85).

⁶⁶ Any assessment carried out under Article 6(3) of the Habitats Directive is without prejudice to the Commission's assessment under Regulation (EC) No 1967/2006 and vice versa.

⁶⁷ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) Text with EEA relevance (OJ L 26, 28.1.2012, p. 1–21).

⁶⁸ See Judgment of the Court (Grand Chamber) of 29 July 2019, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres*, C-411/17, ECLI:EU:C:2019:622, paragraph 123, and the opinion of Advocate General Kokott delivered on 29 November 2018, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres*, C-411/17, ECLI:EU:C:2018:972, paragraph 172, confirmed by Judgment of the Court (Second Chamber) of 7 November 2018, *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland*, Joint cases C-293/17 and C-294/17, ECLI:EU:C:2018:882, paragraphs 67 to 70: 'whether ... may classified as a project ... , it is important to examine whether such activities are likely to have a significant effect on a protected site'.

surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project'⁶⁹.

4. In a ruling on mechanical cockle fishing in the Waddenzee SPA in the Netherlands⁷⁰, the Court found that the fact that a fishing activity has been carried out periodically for several years on the site and that a license has to be obtained for it every year, with each new issuance requiring an assessment of the possibility of continuing that activity and of the site where it may be continued, does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.
5. Article 6(3) is therefore applicable to any fishing activity in Natura 2000 sites for which specific permits are issued or renewed to carry out fishing activities during a specified period, in a given area or for a given fishery under specific conditions.
6. Changes in the intensity of an existing pressure, in this case of fishing activity, may need to be considered under Article 6(3)⁷¹, particularly if they are subject to specific permit requests, and unless they are addressed in application of Articles 6(1) and 6(2). This could be the case, for example, when new or additional authorisations for fishing in a Natura 2000 site are issued.
7. Plans and projects directly related to the conservation management of the site, either individually or as components of other plans and projects, should in principle be excluded from the provisions of Article 6(3), but their non-conservation components may still require an assessment⁷².
8. For example, measures regulating fishing activities could, depending on their content, be considered 'plans or projects (...) directly connected with or necessary to the management of the site' and therefore be exempted from the appropriate assessment under Article 6(3). However, the likely effects of those measures, such as displacement of fishing activities to the same or other Natura 2000 sites, or the effects of gear adaptation which benefits one species protected in the site but may affect another, should be carefully examined and, if appropriate, undergo an assessment.
9. Article 6(3) of the Habitats Directive can only apply to plans or projects to be authorised by Member States' authorities and not to those adopted by the European Union.

⁶⁹ Joint Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland*, paragraph 73: '...Article 6(3) of the Habitats Directive must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project' within the meaning of that provision, even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of the EIA Directive.'

⁷⁰ Judgment of the Court (Grand Chamber) of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:482, paragraphs 25 to 29.

⁷¹ Joint Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland*, paragraph 73; See also: Opinion of Advocate-General Kokott delivered on 29 January 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:60, paragraph 40.

⁷² European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.4.3, page 38.

5.3. WHAT IS AN ‘APPROPRIATE ASSESSMENT’?

The Commission’s guidance on implementing Article 6 recommends that the assessment’s emphasis should be on objectively demonstrating, with supporting evidence, that there will be no likely significant effects on a Natura 2000 site (screening) in view of its conservation objectives or that there will be no adverse effects on the integrity of a Natura 2000 site (appropriate assessment). The focus of the appropriate assessment is therefore specifically on the impact on the species and/or the habitats for which the site is designated.

1. To comply with Article 6(3), an appropriate assessment needs to include complete, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects on the site in view of its conservation objectives⁷³.
2. It must focus on the implications of the plan or project for the site in view of the site’s conservation objectives.
3. Typical species of the habitat in question or those which are part of food webs on which the site’s target feature depend⁷⁴ should therefore be considered. In this context, it should be useful to consider implementing a holistic approach to the management of the site, whereby the whole ecosystem is taken into account. This could lead to faster recovery and greater environmental resilience of the ecosystem.
4. While the appropriate assessment may be part of an environmental impact assessment as required by the EIA Directive or a strategic environmental impact assessment as required by the Strategic Environmental Assessment Directive (SEA Directive)⁷⁵, or carried out alongside that process, it must be clearly distinguishable from those other assessments, since the findings of the appropriate assessment (i.e. whether or not it can be ascertained that the activity in question will not affect the integrity of the site) determine the authorisation as prescribed by Article 6(3), second sentence.
5. Plans and projects not located within Natura 2000 sites will still require appropriate assessment in view of the site’s conservation objectives if there is a likelihood of a significant effect on the sites. In the case of fisheries, an example would be a fishing activity taking place outside a Natura 2000 site which causes sediment plumes that have a significant effect on the benthic communities protected in the site, or fishing activities outside the site which have a detrimental effect on the populations of species protected in the site because of their highly mobile nature.
6. Appropriate assessment should ultimately enable the competent authorities to ascertain whether the plan or project will not adversely affect the integrity of the site concerned⁷⁶ in view of its conservation objectives.

⁷³ E.g. Judgment of the Court (Fourth Chamber) of 20 September 2007, *Commission of the European Communities v Italian Republic*, C-304/05, ECLI:EU:C:2007:532, paragraph 69.

⁷⁴ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.5, page 48.

⁷⁵ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30–37).

⁷⁶ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.4, pages 46–47.

Examples of application of Article 6(3) to fishing activities

In **Ireland**, following the submission in 2021 of a draft Fisheries Natura plan setting out the management arrangements to be taken by vessel owners holding permits to fish cockles (*Cerastoderma edule*) in Dundalk Bay (SPA IE0004026 and SAC IE0000455), the Minister for Agriculture, Food and the Marine decided that there needed to be an appropriate assessment of the draft plan, in accordance with Article 6(3) of the Habitats Directive.

An appropriate assessment report was prepared by the Marine Institute, and the report and appendices, including the draft Fisheries Natura plan itself, were published for a six-week period of public consultation.

Following receipt of any representations or submissions, and in conjunction with the outcome of the appropriate assessment, the Minister decided to adopt a modified version of the Fisheries Natura Plan. For further information, see annex 7.

In the **Netherlands**, in 2024, a new permit request for *Ensis* fishing within several Natura 2000 sites was submitted to the Dutch ministry of Agriculture, Nature and Food Quality. To be considered, such a permit request needs to be accompanied by an appropriate assessment outlining any possible negative effects of the activity on the conservation objectives of the respective Natura 2000 sites, or on the natural characteristics of those sites.

Based on the findings of the appropriate assessment, it was decided to grant the permit for *Ensis* fishing within specific areas of the Natura 2000 sites under certain conditions. Permits are valid for six years. Thereafter a new permit request must be submitted, accompanied by a new appropriate assessment. For further information, see annex 7.

5.4. WHAT IS 'A SIGNIFICANT EFFECT'?

1. The notion of what is 'significant' needs to be interpreted objectively.
2. The significance of effects should be determined in light of the specific features and environmental conditions of the protected site concerned by the plan or project, taking account of the site's conservation objectives and ecological characteristics⁷⁷.
3. An appropriate assessment in view of the site's conservation objectives is always necessary where reasonable doubt exists as to the absence of significant adverse effects⁷⁸.
4. That assessment of whether the site's conservation objectives may be affected must be based on the best consolidated scientific knowledge in the field.
5. In the context of fishing, there are likely to be circumstances where there is insufficient scientific knowledge regarding the likely effects, for example in relation to new fishing methods, changing intensity of existing fishing activities, existing fishing gear which is used in novel ways, or in the case of less well-studied interactions. Under such circumstances, the CJEU has ruled that, in the event of doubt as to the absence of significant effects, an appropriate assessment in view of the site's conservation objectives must be carried out, and that determination of effects must be based on the precautionary principle⁷⁹.

⁷⁷ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.5.2, pages 40–41.

⁷⁸ Judgment of the Court (Fourth Chamber) of 20 September 2007, *Commission of the European Communities v Italian Republic*, C-304/05, ECLI:EU:C:2007:532, paragraph 69.

⁷⁹ See e.g. Judgment of the Court (Grand Chamber) of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, C-127/02, ECLI:EU:C:2004:482, paragraphs 39 to 44.

6. According to the precautionary principle, a risk of significant effect exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned⁸⁰.
7. Minimising damage (e.g. minimising the impact of particular fishing gear) within the constraints of current technology is not sufficient to take the view that there will be no significant effect. For example, the Court considered that ‘a duty to verify whether serious damage, which cannot be prevented by current technology, is reduced to the minimum, does not ensure that such a project will not give rise to such damage’⁸¹.
8. There are many studies investigating and reporting on the potential effects of commercial and recreational fisheries on marine biodiversity in European waters that can be used to inform appropriate assessments of fishing activities. These include studies on the interactions with habitats and species that are protected features of marine Natura 2000 sites⁸². Several Member States that have undertaken such analyses have summarised their conclusions in matrices that indicate whether different fishing methods are expected to have a significant effect on Natura 2000 features (see chapter 4 and annex 5).
9. Monitoring of the effectiveness of mitigation measures taken cannot be considered sufficient to ensure fulfilment of the obligation laid down in Article 6(3) of the Habitats Directive⁸³, since ‘it is at the date of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question’⁸⁴.

5.5. WHAT ARE IN-COMBINATION EFFECTS?

1. In determining likely significant effects, any combination with other plans and/or projects should also be considered in the assessment of the plan or project in question, to take account of possible cumulative impacts.
2. The in-combination provision concerns other plans or projects which have already been completed, those that are approved but not completed, and those that are currently proposed⁸⁵, even where those plans or projects precede the date of transposition of the Habitats Directive⁸⁶.
3. Different types of plans and projects also fall within the scope of these provisions. This means that the application of Article 6(3) not only requires an assessment of fisheries plans and projects likely to have a significant effect on a Natura 2000 site, but also any likely effects arising from combination with other types of plans and projects, such as coastal protection works, offshore wind farm construction and aggregate dredging operations.

⁸⁰ Judgment of the Court (Second Chamber) of 20 October 2005, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, C-6/04, ECLI:EU:C:2005:626, paragraph 54; Judgment of the Court (Second Chamber) of 13 December 2007, *Commission of the European Communities v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraphs 226 to 227.

⁸¹ Judgment of the Court (Second Chamber) of 10 January 2006, *Commission of the European Communities v Federal Republic of Germany*, C-98/03, ECLI:EU:C:2006:3, paragraph 43.

⁸² <https://circabc.europa.eu/ui/group/00564ca7-9d16-4b81-bac5-b35fcb84aa33/library/867a9264-31df-4f7e-afd8-9c9e78cc477b/details>

⁸³ Judgment of the Court (Second Chamber) of 26 April 2017, *European Commission v Federal Republic of Germany*, C-142/16, ECLI:EU:C:2017:301, paragraphs 42 to 43.

⁸⁴ Judgment of the Court (Second Chamber) of 26 October 2006, *Commission of the European Communities v Portuguese Republic*, C-239/04, ECLI:EU:C:2006:665, paragraph 24.

⁸⁵ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.5.3, page 41.

⁸⁶ See Judgment of the Court (Second Chamber) of 26 April 2017, *European Commission v Federal Republic of Germany*, C-142/16, ECLI:EU:C:2017:301, paragraph 61.

4. Cumulative effects resulting from plans and projects operating on different scales, and the potential effects of many small-scale projects and different types of plans and projects, should be analysed in this way, regardless of whether they are considered likely to have a significant effect individually.
5. The main challenge can be dealing with many other plans and projects or a lack of data. In such circumstances, the best scientific knowledge is required and, where such data or knowledge is absent or insufficient, the precautionary principle must be applied⁸⁷.
6. Maritime spatial plans pursuant to Directive 2014/89/EU that include or may affect Natura 2000 sites must be subject to Article 6(3)⁸⁸. Activities contained in the plans, including fishing, should be assessed, including on a broader geographical scale by considering cumulative effects across maritime borders. This may require information to be obtained from other Member States.
7. Assessment of in-combination effects with fisheries plans and projects may also require consideration of plans and projects operating over different time scales (e.g. summer and winter fisheries), focussed on different geographic areas (e.g. sandbanks and adjacent reefs) or spatially separated in the same geographical area (e.g. in benthic and pelagic habitats).
8. Fisheries are transboundary by nature. EU fishing operators function under the framework of the CFP, with vessels flying the flag of Member States enjoying specific rights and access to certain fisheries in both their waters and those of other Member States. The Espoo Convention⁸⁹, which is implemented within the EU through the EIA and SEA Directives, requires transboundary effects to be taken into account in the assessments. It is therefore clear that transboundary effects must also be considered in appropriate assessments under Article 6(3). These effects may arise spatially, e.g. from fishing activities in the waters of one Member State having effects on Natura 2000 habitats and species in another Member State, or in the event of one Member State's fleet fishing in a Natura 2000 site of another Member State.
9. In the case of fisheries, a comprehensive assessment of in-combination effects beyond territorial waters, i.e. also in the zone in which a Member State exercises jurisdiction (and in some cases within the 6-12 NM zone where there are specific access arrangements in accordance with Article 5 and Annex I of the CFP Regulation), is most likely to require consideration of plans and projects from more than one Member State. It may also be relevant to assess in-combination effects with plans and projects in areas beyond national jurisdiction.

5.6. WHAT IS 'THE INTEGRITY OF THE SITE'?

1. The integrity of the site concerns its constitutive characteristics and ecological functions⁹⁰.
2. Effects on the integrity of Natura 2000 sites must be assessed in relation to the conservation objectives established for each of the protected habitats, complex of habitats, the constituent

⁸⁷ E.g. Judgment of the Court (Second Chamber) of 20 October 2005, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, C-6/04 ECLI:EU:C:2005:626, paragraph 54; Judgment of the Court (Second Chamber) of 13 December 2007, *Commission of the European Communities v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraph 226.

⁸⁸ See recitals 15 and 23 of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135–145).

⁸⁹ UNECE Convention on environmental impact assessment in a transboundary context, <https://www.unece.org/env/eia/eia.html>

⁹⁰ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.4, pages 46–47.

typical species of those habitats⁹¹ and/or populations of species for which the sites are designated.

3. Site integrity will also require consideration of the coherent sum of the site's ecological structure, function and the ecological processes across its whole area. It can also be considered to have the resilience and capacity to evolve in ways that are favourable to conservation⁹².
4. According to the provisions of Article 6(4), national authorities 'cannot authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host priority natural habitat types'⁹³. Furthermore, 'the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site ... will adversely affect the integrity of that site. The precautionary principle should be applied for the purposes of that appraisal'⁹⁴. The logic of such an interpretation would also apply to non-priority habitat types and to habitats of species⁹⁵.

Example of effects on site integrity

In the context of fishing activity, site integrity may, for example, be affected by the use of demersal towed gear which is known to reduce the structural complexity of some soft sediment habitats and lead to changes in the dominant and typical species.

The removal of predatory fish can also affect site integrity by, for example, changing sea urchin population densities. One of the consequences can be phase shifts from structurally complex macroalgal canopy communities to 'sea urchin barrens' in areas previously dominated by *Cystoseira* or kelp forests⁹⁶.

5.7. WHAT IS THE RELATIONSHIP BETWEEN ARTICLE 6(2) AND ARTICLE 6(3)?

1. Article 6(2) and Article 6(3) are designed to ensure the same level of protection of natural habitats and habitats of species⁹⁷.
2. The provisions of Article 6(2) apply to the site at all times, whereas those under Article 6(3) only come into play if a plan or project is being proposed that may have a significant effect on the site.
3. Measures taken under Article 6(2) can facilitate the application of Article 6(3). For example, risk assessments to establish which fishing activities could have a negative impact on the species and habitats protected in a site, and are therefore covered by Article 6(2), could help to

⁹¹ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.5, page 48.

⁹² European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.4, pages 46–47.

⁹³ Judgment of the Court (Third Chamber), 11 April 2013, *Peter Sweetman and Others v An Bord Pleanála. Request for a preliminary ruling from the Supreme Court (Ireland)*, C-258/11, ECLI:EU:C:2013:220, paragraph 43.

⁹⁴ Judgment of the Court (Third Chamber), 11 April 2013, *Peter Sweetman and Others v An Bord Pleanála. Request for a preliminary ruling from the Supreme Court (Ireland)*, C-258/11, ECLI:EU:C:2013:220, paragraphs 46 to 48.

⁹⁵ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 4.6.4, pages 46–47.

⁹⁶ E.g. Filbee-Dexter, K. and Scheibling, R.E., *Sea urchin barrens as alternative stable states of collapsed kelp ecosystems*, Marine Ecology Progress Series, Vol. 495, 2014, pp. 1–25, doi: 10.3354/meps10573.

⁹⁷ Judgment of the Court (Fourth Chamber) of 24 November 2011, *European Commission v Kingdom of Spain*, C-404/09, ECLI:EU:C:2011:768, paragraph 142.

examine plans and projects involving these same activities in relation to their likelihood to have a significant effect on the integrity of the site as an aspect of 'screening' for an appropriate assessment.

4. Similarly, restrictions on specific fishing activities, such as regulating their area of extent, intensity or mode of operation, established on the basis of such a risk assessment in order to prevent deterioration of habitats and significant disturbance of species, could eliminate or reduce the need for additional mitigation measures to be established as a result of the appropriate assessment under Article 6(3). However, site-specific assessment in a particular Natura 2000 site will ultimately be required to validate the approach of such measures and their sufficiency in light of the site's conservation objectives and the characteristics of the proposed plan or project.
5. If a review of a plan or project is necessary to comply with the provisions of Article 6(2), it must be carried out in accordance with the requirements of Article 6(3)⁹⁸. This is the case when a project or activity was authorised prior to the inclusion of sites on the SCI list, or their classification as SPAs, and which is not subject to the obligation to assess its implications for habitat types and species under Article 6(3), but the effects of which might adversely affect the integrity of those sites.

⁹⁸ Judgment of the Court (Third Chamber) of 14 January 2016, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, C-399/14, ECLI:EU:C:2016:10, paragraph 54.

6. Applying Article 6(4) of the Habitats Directive to fishing activities

Article 6(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 6(4) allows for exceptions to the general rule of Article 6(3) but its application is not automatic. It is up to the national authority to decide whether the conditions for a derogation from Article 6(3) can be applied if an appropriate assessment has concluded that a plan or project will adversely affect the integrity of the site concerned, or in case of doubt whether such adverse effects could occur.

6.1. WHEN DOES ARTICLE 6(4) OF THE HABITATS DIRECTIVE APPLY?

1. Where the appropriate assessment of plans or projects cannot conclude that the integrity of the sites concerned will not be affected, those plans or projects may only be approved by the competent authorities if a derogation is sought in accordance with the provisions of Article 6(4).
2. In the sphere of fishing, this should concern fishing activities which have a significant impact on a Natura 2000 site, as demonstrated through an Article 6(3) procedure.
3. The three key requirements for applying Article 6(4) that must be met and documented are:
 - alternatives have been considered and it can be demonstrated that the version put forward for approval is the least damaging for habitats and species and for the integrity of the Natura 2000 site;
 - there are imperative reasons of overriding public interest, including ‘those of a social or economic nature’;
 - all compensatory measures required to protect the overall coherence of the Natura 2000 network have been put in place.

6.2. WHAT ARE ‘ALTERNATIVE SOLUTIONS’?

1. Alternative solutions could refer to an alternative design of the project, different scales or broader options to achieve the same overall objective.
2. Examining alternative solutions under Article 6(4) involves the following tasks:
 - identifying alternative solutions;
 - a comparative assessment of the alternatives considered;
 - justifying the absence of alternatives that are feasible for consideration under Article 6(4) (if applicable).
3. The economic cost of the steps that may be considered in the review of alternatives cannot be the sole determining factor in the choice of alternative solutions⁹⁹.
4. The absence of alternatives must be demonstrated before examining whether the plan or project is necessary for imperative reasons of public interest¹⁰⁰.
5. In the case of fishing activities, it should for example be demonstrated that the species targeted by fisheries in question cannot be caught with other gear that has no significant impact on the site, that it cannot be caught in another area outside the Natura 2000 site, and that different species cannot be used to achieve the food provision objective.

6.3. WHAT ARE ‘IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST’ (IROPI)?

1. Human health, public safety and beneficial consequences of primary importance for the environment are examples of imperative reasons of overriding public interest.
2. Public interests can occur at national, regional or local level. Only public interests can be balanced against the conservation aims of the Directive, irrespective of whether they are promoted either by public or private bodies. Projects developed by private bodies can only be considered where such public interests are demonstrably served.
3. Public and overriding interest means that a plan or project must be of such high importance that it can be weighed up against the Directive’s objective of conserving natural habitats and wild fauna and flora. A public interest can only be overriding if it is a long-term interest.
4. Where a priority natural habitat type or a priority species is affected, the only considerations which may be raised as IROPI under Article 6(4) of the Habitats Directive are those relating to human health or public safety, or to beneficial consequences of primary importance for the environment. For other imperative reasons of overriding public interest, an opinion from the Commission is required.
5. In coastal areas that are heavily reliant on fisheries, such public interest of social or economic nature can be related to the importance of fishing as the primary or exclusive source of employment and income for the local community.

⁹⁹ Judgment of the Court (Third Chamber) of 14 January 2016, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, C-399/14, ECLI:EU:C:2016:10, paragraph 77.

¹⁰⁰ Judgment of the Court (Second Chamber) of 26 October 2006, *Commission of the European Communities v Portuguese Republic*, C-239/04, ECLI:EU:C:2006:665, paragraphs 36 to 39.

6.4. WHAT ARE 'COMPENSATORY MEASURES'?

1. Compensatory measures are measures specific to a project or plan, additional to those addressing the normal duties stemming from the Birds and Habitats Directives.
2. Compensatory measures can only be considered in the context of Article 6(4).
3. They are independent of the project (including any associated mitigation measures).
4. They are intended to offset the residual negative effects of the plan or project on the species or habitats concerned so that the overall ecological coherence of the Natura 2000 network is maintained.
5. Compensatory measures appropriate or necessary to offset the adverse effects on a Natura 2000 site (i.e. in addition to what is already required under the Directives) may consist of habitat creation, habitat restoration, population reinforcement, species reintroduction, etc. It should be noted that in the marine environment, re-establishment of habitats may be uncertain and challenging (in particular at large spatial scales), costly and can take decades.
6. In principle, the result of compensation measures must be achieved at the time when the damage occurs on the site concerned. Under certain circumstances where this cannot be fully achieved, overcompensation would be required for the interim losses¹⁰¹.
7. Designations of new Natura 2000 sites forming part of compensation measures must be submitted to the Commission before the measures are implemented and before the project is carried out, but after its authorisation. The new designations should qualify for designation according to relevant criteria under the Habitats and Birds Directives respectively and should be made available to the Commission through the established procedures for EU lists for SCIs and for SPA classifications.

¹⁰¹ European Commission: Directorate-General for Environment, *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, Publications Office, 2019, <https://data.europa.eu/doi/10.2779/02245>. See chapter 5.4.3, pages 60–61.

7. Application of Article 6 of the Habitats Directive and Article 4 of the Birds Directive in the context of the common fisheries policy

Conservation of marine biological resources under the CFP is an exclusive competence of the European Union pursuant to Article 3(1)(d) of the Treaty on the Functioning of the European Union (TFEU). Measures for compliance by Member States with Article 6 of the Habitats Directive and Article 4 of the Birds Directive as regards commercial and recreational fishing activities in marine waters must therefore be adopted according to the rules and procedures of the CFP¹⁰².

The CFP rules aim to ensure the sustainable use and conservation of marine biological resources by including provisions aimed at reducing the impact of fisheries on the marine ecosystem, e.g. avoiding by-catches of sensitive species or limiting the impact of fishing gear on sensitive seabed habitats. Many CFP tools for the management of fishing activities under the different fisheries regulations can be used for this purpose, with a view to both ensuring compliance with the rules and procedures of the CFP and the relevant obligations for Member States under the MSFD and the Birds and Habitats Directives.

In principle, fisheries conservation measures are adopted by the EU by means of the ordinary legislative procedure (co-decision) or, where provided for, by the Council in accordance with Article 43(3) of the TFEU¹⁰³, or the Commission through delegated or implementing acts, based on empowerments from several acts in the area of fisheries. Some of these measures may be relevant for Natura 2000 sites protecting species and habitats listed under the Birds and Habitats Directives. Such measures are, for example, the prohibition of or restrictions on the use of certain fishing gear and methods, such as explosives, percussive instruments, coral-harvesting dredges and grabs or driftnets¹⁰⁴, or the prohibition of fishing with certain mobile bottom-contacting gear in the Mediterranean above beds of *Posidonia oceanica* and other seagrasses and above coralligenous habitats and maerl beds¹⁰⁵. The prohibition on fishing below a certain depth in areas where vulnerable marine ecosystems occur or are likely to occur¹⁰⁶ may also be relevant for Natura 2000 sites. These measures may therefore

¹⁰² The basic rules that apply are set out in 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).

¹⁰³ The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

¹⁰⁴ See Article 7 and 9 of Regulation (EU) 2019/1241.

¹⁰⁵ See Article 4(1) and 4(2) of Council Regulation (EC) No 1967/2006.

¹⁰⁶ See Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002 (OJ L 354, 23.12.2016, p. 1–19);

Commission Implementing Regulation (EU) 2022/1614 of 15 September 2022 determining the existing deep-sea fishing areas and establishing a list of areas where vulnerable marine ecosystems are known to occur or are likely to occur C/2022/6470 (OJ L 242, 19.9.2022, p. 1–141).

provide a starting point for considering how Member States can further complement the existing CFP measures with additional measures, to implement the conservation measures in Natura 2000 sites that are required by Article 4 of the Birds Directive and Article 6 of the Habitats Directive.

In some cases, and under certain conditions, Member States are empowered to adopt national conservation measures affecting fishing activities (see chapter 7.1). The scope of those measures, and the conditions for them, are set out in the CFP legislation (e.g. the CFP Regulation, the Technical Measures Regulation¹⁰⁷ and the Mediterranean Regulation¹⁰⁸).

The CFP ensures that Union fishing vessels have equal access to waters and resources in all Union waters other than those referred to in Article 5 of the CFP Regulation¹⁰⁹. This means that, in case other Member States' vessels are concerned by the measures necessary to comply with Article 6 of the Habitats Directive and Article 4 of the Birds Directive, to avoid discrimination and be effective, the measures must apply to all EU vessels.

To achieve this, the CFP enables Member States to propose measures under the CFP, through so-called 'joint recommendation', in the context of regionalisation¹¹⁰. The Commission adopts these measures by means of delegated regulations¹¹¹, taking into account any available scientific advice and in accordance with the conditions laid down in the legislation (see chapter 7.2).

Finally, in some cases the Commission can adopt or initiate the adoption of relevant measures. For example, in the absence of a joint recommendation, in cases of urgency and under certain conditions, the Commission must adopt the measures proposed by Member States and in the absence of which the achievement of the objectives associated with the establishment of the conservation measures and the Member State's intentions, is in jeopardy¹¹². These measures apply for a limited time¹¹³. Also, if not all Member States succeed in agreeing on a joint recommendation to be submitted to the Commission within the deadline set in Article 11 of the CFP Regulation, or if the joint recommendation is deemed not to be compatible with the requirements referred to therein, the Commission may submit a proposal in accordance with the Treaty¹¹⁴.

7.1. MEASURES THAT MAY BE ADOPTED BY MEMBER STATES AT NATIONAL LEVEL

Member States may adopt national measures based on provisions of the CFP legislation provided that they are compatible with the objectives set out in Article 2 of the CFP Regulation, are non-discriminatory and are at least as stringent as measures under EU law.

¹⁰⁷ Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 PE/59/2019/REV/1 (OJ L 198, 25.7.2019, p. 105–201).

¹⁰⁸ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11–85).

¹⁰⁹ In accordance with and subject to the conditions set out in paragraphs 2 and 3 of Article 5 of Regulation (EU) No 1380/2013 Member States may restrict the access to their 12-nautical-mile zones. The restrictions are set out in Annex I to the Regulation.

¹¹⁰ Article 18 of Regulation (EU) 1380/2013 (CFP Regulation).

¹¹¹ Delegated regulations are adopted by the European Commission on the basis of a delegation granted in the text of an EU law.

¹¹² Article 11(4) of Regulation (EU) 1380/2013 (CFP Regulation).

¹¹³ Article 11(5) of Regulation (EU) 1380/2013 (CFP Regulation).

¹¹⁴ Article 11(3) of Regulation (EU) 1380/2013 (CFP Regulation).

7.1.1. National measures under the common fisheries policy Regulation

Article 11 of the CFP Regulation provides the main specific framework for Member States to introduce fisheries management measures necessary to comply with Article 6 of the Habitats Directive and Article 4 of the Birds Directive, which are applicable to waters under their sovereignty or jurisdiction.

Article 11(1) allows Member States to adopt conservation measures in their Natura 2000 sites, if those measures do not affect vessels from other Member States, provided that those measures are compatible with the objectives set out in Article 2 of the CFP Regulation and are necessary for compliance with Member States' obligations under EU environmental legislation (Article 13(4) of the MSFD, Article 4 of the Birds Directive or Article 6 of the Habitats Directive).

According to Article 19 of the CFP Regulation, a Member State may adopt measures to conserve fish stocks in EU waters. These would apply solely to fishing vessels flying its flag.

Under Article 20 of the CFP Regulation, a Member State may take non-discriminatory measures to conserve and manage fish stocks and maintain or improve the conservation status of marine ecosystems within 12 nautical miles of its baselines. This is only permitted, however, if the EU has not adopted measures addressing conservation and management specifically for that area or specifically addressing the problem identified by the Member State concerned.

Where these are liable to affect fishing vessels of other Member States, such measures must be adopted only after consulting the Commission, the relevant Member States and the relevant Advisory Councils¹¹⁵.

Finally, Article 13 of the CFP Regulation empowers Member States to adopt emergency measures, under certain conditions, on the basis of evidence of a serious threat to the conservation of marine biological resources or to the marine ecosystem that requires immediate action. For example, in January 2024, the French authorities adopted an 'emergency measure' under Article 13(1) of the CFP Regulation. The measure aimed at protecting small cetaceans by establishing a one-month ban on fishing with certain fishing gear in the French waters of the Bay of Biscay for all Member States¹¹⁶.

7.1.2. National measures under the Technical Measures Regulation

Under Article 11(4) of the Technical Measures Regulation, a Member State may, on the basis of the best available scientific advice, for vessels flying its flag, put in place mitigation measures or restrictions on the use of certain gear as a means of minimising – and, where possible, eliminating – the catches of marine mammals or marine reptiles referred to in Annexes II and IV to the Habitats Directive and of species of seabirds covered by the Birds Directive.

Under Article 12 of the same Regulation, the Member State in question may establish closed areas or other conservation measures to protect certain sensitive habitats or vulnerable marine ecosystems in waters under its sovereignty or jurisdiction.

7.1.3. National measures under other regulations

Other regulations may allow Member States to take, under certain conditions, technical measures in waters under their sovereignty or jurisdiction or concerning their vessels.

¹¹⁵ Advisory Councils (ACs) are stakeholder-led organisations that provide the Commission and EU countries with recommendations on fisheries management matters

¹¹⁶ Arrêté du 17 janvier 2024 établissant des mesures spatio-temporelles pour les navires battant pavillon étranger, visant la réduction des captures accidentelles de petits cétacés dans le golfe de Gascogne pour l'année 2024, NOR: TREC2401621A, ELI: <https://www.legifrance.gouv.fr/eli/arrete/2024/1/17/TREC2401621A/jo/texte>, JORF n°0014 du 18 janvier 2024.

For example, Article 7(2) of the Mediterranean Regulation allows Member States to designate national fishing protected areas, within their territorial waters, to conserve and manage living aquatic resources or maintain or improve the conservation status of marine ecosystems.

Article 19(2) of the same Regulation allows them to designate national management plans for certain fisheries in territorial waters, which can include measures to increase the selectivity of fishing gear, reduce discards or limit the fishing effort.

7.2. MEASURES THAT MEMBER STATES MAY PROPOSE FOR ADOPTION BY THE EU (REGIONALISATION)

According to Article 11(2) and (3) of the CFP Regulation, where other Member States have a direct management interest in the fisheries to be affected by conservation measures in one Member State's Natura 2000 sites, the Member States concerned may submit to the Commission a joint recommendation containing the necessary conservation measures.

The Commission is empowered to adopt such measures by means of delegated acts, making them applicable to fishing vessels of all Member States¹¹⁷. Good practice in the procedure for preparing joint recommendations under Article 11 of the CFP Regulation is set out in the relevant guidance document¹¹⁸.

Commission's 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

This document has been drawn up by the Commission services after having consulted the Member States' experts and the relevant stakeholders.

It is intended to set out good practices as regards the elements to be considered by Member States when preparing joint recommendations for the adoption of conservation measures under the CFP regulation.

The objective is to help them comply with their obligations under:

- Article 6 of the Habitats Directive,
- Article 4 of the Birds Directive,
- Article 13(4) of the Marine Strategy Framework Directive.

It explains the rules and procedures for the submission of a joint recommendation by the Member States to enable the Commission to adopt conservation measures by means of a delegated act under Articles 11(2) and 11(3) of the CFP Regulation.

The document can be consulted here in all languages: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2018\)288&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2018)288&lang=en)

Under the Technical Measures Regulation, Member States may propose measures to be adopted by the EU that apply to a wider marine area than Natura 2000 sites, which, without prejudice to those

¹¹⁷ For example, see 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 C/2016/5549 (OJ L 19, 25.1.2017, p. 10–25) and Commission Delegated Regulation (EU) 2017/117 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778 C/2016/5562 (OJ L 19, 25.1.2017, p. 1–9).

¹¹⁸ SWD(2018) 288 final. 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.

sites' management plans, can also help to ensure Member States' compliance with Article 6 of the Habitats Directive and Article 4 of the Birds Directive.

Pursuant to Article 15(2) of the Technical Measures Regulation, the Commission is empowered to adopt delegated acts (on the basis of a joint recommendation submitted in accordance with Article 18 of the CFP Regulation) in order to amend, supplement, repeal or derogate from the technical measures set out in the Annexes to this Regulation. Such measures include closed or restricted areas, restrictions on the use of fishing gear or mitigation measures to reduce incidental catches of sensitive species.

Article 19 of the same Regulation also allows real-time closures in conjunction with moving-on provisions with the aim of ensuring the protection of sensitive species, as an option to be implemented through regionalisation. The Commission must adopt such delegated acts based on a joint recommendation submitted by Member States having a direct management interest, taking into account the best available scientific advice. Member States must provide scientific evidence to support the adoption of those measures. The Commission may require the Scientific, Technical and Economic Committee for Fisheries (STECF) to assess the joint recommendations. Article 21 elaborates on the nature conservation measures that can be included in joint recommendations.

Conservation measures adopted through the regionalisation under the CFP will often concern fisheries measures to improve the condition of habitats or habitats of species or to re-establish those habitats. Therefore, these measures in Natura 2000 sites may be the same measures as those required by the Regulation on nature restoration¹¹⁹. In this case, the provisions of this Regulation would apply. This includes the requirement to provide any relevant information on those measures in the national restoration plans and to make full use of the tools provided in the CFP. Member States preparing the national restoration plans must, considering the deadlines provided for in Article 5 of the Regulation on nature restoration¹²⁰, initiate in a timely manner consultations with other Member States having a direct management interest affected by these measures and the relevant Advisory Councils under Article 18(2) of the CFP Regulation to enable timely agreement on and submission of any joint recommendations. For that purpose, Member States must include in the national restoration plan the estimated timing of the consultation and of the submission of the joint recommendations. Member States must submit the joint recommendations on the conservation measures necessary to contribute to meeting the targets set in Article 5 of the Regulation on nature restoration at the latest 18 months before the respective deadline for targets set for 2030, 2040 and 2050.

In some Member States, a Natura 2000 site might be designated on the continental shelf¹²¹, with superjacent international waters. Since CFP rules apply, where managing bottom-contact fishing is necessary to protect these sites, fisheries management measures with regard to exploring and exploiting sedentary marine living resources¹²² can be adopted in accordance with these rules, as outlined in Chapter 7, as appropriate. Such measures may also originate from or require collaboration with relevant regional fisheries management organisations.

7.3. SHARED RESPONSIBILITY OF MEMBER STATES

Given the Natura 2000 network's objective of enabling natural habitats of Community interest and habitats of species of Community interest to be maintained or restored at a favourable conservation status within their natural range, and the duty of sincere cooperation under the Treaty which also

¹¹⁹ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 PE/74/2023/REV/1 (OJ L, 2024/1991, 29.7.2024).

¹²⁰ Article 5 on restoration of marine ecosystems of Regulation (EU) 2024/1991.

¹²¹ See articles 77, 192, 193 and 194 of the United Nations Convention on the Law of the Sea (UNCLOS).

¹²² See article 77(4) of UNCLOS which refers to 'living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil'.

applies between Member States¹²³, the Member States have a shared responsibility to protect Natura 2000 sites. This means that, though the primary responsibility to protect a site, falls to the Member State hosting it, other Member States must cooperate and take action if such cooperation is necessary to comply with the legal requirements of the Habitats and Birds Directives and to achieve their objectives.

As regards fisheries management measures, such as in the procedure under Article 18 of the CFP Regulation, Member States must cooperate with one another in formulating joint recommendations. The Commission must facilitate cooperation between Member States, including, where necessary, by ensuring that a scientific contribution is obtained from the relevant scientific bodies. In particular, if a certain measure, according to scientific evidence, is considered by the initiating Member State essential to achieving the conservation objectives, the Member States must constructively cooperate in reaching an agreement on that measure with a view to complying with Article 6 of the Habitats Directive and Article 4 of the Birds Directive, and in fulfilment of the duty of sincere cooperation under Article 4(3) TFEU.

¹²³ Article 4(3) of the Treaty on the Functioning of the EU; see also e.g. Judgment of the Court of 22 March 1983, *Commission of the European Communities v French Republic*, C-42/82, ECLI:EU:C:1983:88, paragraph 36.

8. Measures outside of the common fisheries policy applicable to fishing vessels

National measures not related to fisheries management but applicable to all vessels may be put in place by the Member State's authorities to reduce certain impacts on habitats or species, such as collisions of cetaceans with vessels, impacts of non-indigenous species or underwater noise. For example, they could regulate the anchoring of vessels to avoid negative impacts on reefs or *Posidonia* meadows. They could also regulate the speed of vessels or the use of lights, including by designating areas to be avoided, to prevent collisions or reduce the impact of underwater noise on cetaceans, and of vessels' lights on seabirds. Another possible measure is the designation of areas to be avoided by maritime traffic. These measures may be applicable to all vessels, including fishing vessels.

The International Maritime Organisation (IMO) may also adopt measures that apply to fishing vessels and that protect marine ecosystems like those concerning ballast water and biofouling management that aim to avoid introduction of non-indigenous species. Member States may propose such measures to be put in place by the IMO, which would help them comply with Article 6 of the Habitats Directive and Article 4 of the Birds Directive. Depending on the scope of the measures proposed and their impact on normal maritime traffic, and in accordance with Directive 2002/59/EC¹²⁴, such proposals to the IMO might need to be submitted via the EU.

Example of measures outside the scope of the CFP which are applicable to fishing vessels

Transport Malta has issued notices to mariners aimed at protecting threatened Yelkouan shearwater (*Puffinus yelkouan*) by limiting maritime activities near nine sites within Natura 2000 sites around Malta and Gozo.

The notices were issued as a result of a partnership with BirdLife Malta, which implemented the LIFE Arcipelagu Garnija project¹²⁵. The notices to mariners create buffer zones around those sites and restrict lighting and noise from vessels, their anchoring, and vessel navigation.

For more details, see annex 8.

¹²⁴ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10–27).

¹²⁵ <https://webgate.ec.europa.eu/life/publicWebsite/project/LIFE14-NAT-MT-000991/life-arcipelagu-garnija-securing-the-maltese-islands-for-the-yelkouan-shearwater-puffinus-yelkouan>

9. Annexes: Examples

Disclaimer: The examples in the annexes are without prejudice to full and timely compliance with relevant obligations under the Birds and Habitats Directives.

ANNEX 1. SETTING SITE-SPECIFIC CONSERVATION OBJECTIVES FOR MARINE NATURA 2000 SITES UNDER THE BIRDS AND HABITATS DIRECTIVES

1 Examples from Ireland

A list of attributes on habitat area, habitat distribution and community distribution, with associated targets, was drawn up in order to maintain the favourable conservation condition of Sandbanks which are slightly covered by sea water all the time (Habitat 1110) in the Natura 2000 site Blackwater Bank SAC (IE0002953) in Ireland¹²⁶.

Conservation objectives for: Blackwater Bank SAC [002953]			
1110 Sandbanks which are slightly covered by sea water all the time			
To maintain the favourable conservation condition of Sandbanks which are slightly covered by sea water all the time in Blackwater Bank SAC, which is defined by the following list of attributes and targets:			
Attribute	Measure	Target	Notes
Habitat area	Hectares	The permanent habitat area is stable or increasing, subject to natural processes. See map 3	Habitat area was estimated as 7310 ha using the Carnsore Point to Wicklow Head Admiralty Chart (no. 1787-0)
Habitat distribution	Occurrence	The distribution of sandbanks is stable or increasing, subject to natural processes. See map 3	Distribution established using the Carnsore Point to Wicklow Head Admiralty Chart (no. 1787-0)
Community distribution	Hectares	Conserve the following community type in a natural condition: Sand with <i>Nephtys cirrosa</i> and <i>Bathyporeia elegans</i> community complex. See map 4	The likely area of the community was derived from benthic surveys undertaken in 2005 (Roche et al., 2007) and in 2012 (Aquafact, 2012). See marine supporting document for further details

A list of attributes on distribution, habitat area and community structure, with associated targets, was drawn up in order to maintain the favourable conservation condition of Reefs (Habitats 1170) in the site Slyne Head Islands SAC (IE0000328) in Ireland¹²⁷.

Conservation objectives for: Slyne Head Islands SAC [000328]			
1170 Reefs			
To maintain the favourable conservation condition of Reefs in Slyne Head Islands SAC, which is defined by the following list of attributes and targets:			
Attribute	Measure	Target	Notes
Distribution	Occurrence	The distribution of reefs is stable or increasing, subject to natural processes. See map 3	Distribution was established from 2010 subtidal reef survey (Aquafact, 2011) and 2012 field observations
Habitat area	Hectares	The permanent area is stable, subject to natural processes. See map 3	Habitat area was estimated as 1418 ha from 2010 subtidal reef survey (Aquafact, 2011) and 2012 field observations
Community structure	Biological composition	Conserve the following community types in a natural condition: Exposed intertidal reef community complex; <i>Laminaria</i> -dominated community; and Exposed subtidal reef with echinoderms and encrusting algae community. See map 4	Based on 2010 subtidal reef survey (Aquafact, 2011) and 2012 field observations

¹²⁶ Source: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002953.pdf

¹²⁷ Source: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0000328.pdf

The following list of attributes and targets was drawn up in order to maintain the favourable conservation condition of Grey Seal in Slyne Head Islands SAC (IE000328) in Ireland¹²⁸.

Conservation objectives for: Slyne Head Islands SAC [000328]			
1364 Grey Seal <i>Halichoerus grypus</i>			
To maintain the favourable conservation condition of Grey Seal in Slyne Head Islands SAC, which is defined by the following list of attributes and targets:			
Attribute	Measure	Target	Notes
Access to suitable habitat	Number of artificial barriers	Species range within the site should not be restricted by artificial barriers to site use. See map 5	See marine supporting document for further details
Breeding behaviour	Breeding sites	Conserve the breeding sites in a natural condition. See map 5	Attribute and target based on background knowledge of Irish breeding populations, review of data from Summers (1983), Lyons (2004), Ó Cadhla et al. (2005), a comprehensive breeding survey in 2005 (Ó Cadhla et al., 2008) and unpublished National Parks and Wildlife Service records. See marine supporting document for further details
Moulting behaviour	Moult haul-out sites	Conserve the moult haul-out sites in a natural condition. See map 5	Attribute and target based on background knowledge of Irish populations, review of data from Ó Cadhla et al. (2006), a national moult survey (Ó Cadhla and Strong, 2007) and unpublished National Parks and Wildlife Service records. See marine supporting document for further details
Resting behaviour	Resting haul-out sites	Conserve the resting haul-out sites in a natural condition. See map 5	Attribute and target based on review of data from Lyons (2004), Cronin et al. (2004), Ó Cadhla et al. (2005) and unpublished National Parks and Wildlife Service records. See marine supporting document for further details
Disturbance	Level of impact	Human activities should occur at levels that do not adversely affect the grey seal population at the site	See marine supporting document for further details

¹²⁸ Source: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0000328.pdf

2 Example from Belgium

Conservation objectives adopted in 2022 for the Vlaamse Banken Natura 2000 site in Belgium¹²⁹.

Targets
1 The spatial extent of habitat type 1110 does not change significantly
1.1 The spatial range and distribution of Level 2 EUNIS physical habitats (sandy mud to mud, muddy sand to sand and gravel containing sediment) fluctuates - in relation to the reference status as described in the 'Initial Assessment' (KRMS) - within a margin limited to the accuracy of the current distribution folders
1.2 The spatial range and distribution of the <i>A. alba</i> community is maintained
2 Function of shallow sandbanks as spawning and nursery areas is maintained or enhanced
2.1 Occurrence and densities of juvenile flatfish such as plaice (<i>Pleuronectes platessa</i>) and sole (<i>Solea solea</i>) in the coastal zone is maintained or increasing.
3 Non-indigenous species introduced by human activities occur at levels that do not alter the ecosystem.
3.1 Introduction of new human-introduced non-native species of macrofauna and macroflora (>1mm) that alter an ecosystem is avoided.
4 The frequency of occurrence of vulnerable species increases
4.1 The ratio of benthic R-strategists to K-strategists (at species level) is decreasing
4.2 The number of K-strategists (at species level) is increasing
4.3 There is a positive trend in the mean density of adult specimens (or frequency of occurrence) of a selection of long-lived and/or slow reproducing species and the major structuring benthic species groups in mud to muddy sands and pure fine to gravelly sands
5 The benthic ecosystem provides sufficient food for higher trophic levels
6 The ecological quality of the benthic habitat of the <i>Abra alba</i> biotope is preserved
6.1 The Benthic Ecosystem Quality Indicator as determined by BEQI tool is a minimum value of 0.60 for each occurring community
6.2 The bioturbation potential (BPC), an indicator for evaluating the functioning of the benthic ecosystem, has a minimum value of 0.60 (as determined via the BEQI procedure) for the <i>A. alba</i> community in the second half of the year.
7 The autonomous development of <i>L. conchilega</i> aggregations is not prevented
7.1 The 3D structures formed by <i>L. conchilega</i> are preserved
7.2 The densities of the <i>L. conchilega</i> reef-associated species (e.g. <i>Eumida sanguinea</i> , <i>Pariambus typicus</i> , <i>Microtopopus maculatus</i> and <i>Phyllodoce</i> spp.) do not show a downward trend
8 There is at least a conservation of the surface area of naturally occurring hard substrates
8.1 For gravel beds, the ratio of hard substrate surfaces (specifically, surfaces colonized by hard substrate epifauna) to soft sediment surfaces (specifically, surfaces on top of the hard substrate and preventing the development of substrate fauna) should not show a negative trend in predefined test zones
9 There is a recovery of more natural benthic communities in the gravel beds
9.1 There has been an increase in species richness within taxa typically associated with hard substrates (specifically Porifera, Cnidaria, Bryozoa, Polychaeta, Malacostraca, Maxillopoda, Gastropoda, Bivalvia, Echinodermata and Ascidacea)
9.2 There is an increase in the frequency of occurrence or median density of adult or mature colonies of at least half of the most important and long-lived species within gravel beds: native Flat oyster (<i>Ostrea edulis</i>), Mussel (<i>Mytilus edulis</i>), Common Whelk (<i>Buccinum undatum</i>), Dead man's fingers (<i>Alcyonium digitatum</i>), erected sponges (such as Mermaid's glove sponge (<i>Haliclona oculata</i>)) and erected Bryozoa (such as Sea chervil (<i>Alcyonidium</i> spp.) and Leafy hornwrack (<i>Flustra foliacea</i>))
9.3 There is an increase in the median body size of the larger benthic species: Common Whelk (<i>Buccinum undatum</i>) and Spider Crabs (Majidae spp.)
9.4 There is an increase in the number and size of sand tubeworm Ross worm (<i>Sabellaria spinulosa</i>) reefs and the number of clusters of triangular tubeworms (<i>Pomatoceros (Spirobranchus) triqueter</i>). - Type 1
9.5 There is recovery of gravel beds as spawning areas for Herring (<i>Clupea harengus</i>) and as sites for egg deposition by rays and sharks

¹²⁹ Belgische Staat. 2022. Instandhoudingsdoelstellingen voor het Belgische deel van de Noordzee - Habitat- en Vogelrichtlijn – Herziening 2022. Federale Overheidsdienst Volksgezondheid, Veiligheid van de Voedselketen en Leefmilieu, DG Leefmilieu, Brussel, België: 27 pp.

3 Example from Greece

Conservation objectives for the habitat type *Posidonia* meadows (*Posidonium oceanicae*) (1120) in the NISOS GYAROS KAI THALASSIA ZONI SCI-SPA (GR4220033)¹³⁰.

Parameter	Measurement unit	Target	Specific Target
Surface	Hectares	199.4	Maintenance
Rhizome growth strategy (at 15 m depth)	% of plagiotropic rhizomes	<10%	Maintenance
Depth of lower distribution limit	Metres	≥35	Maintenance
Meadow coverage (at 15 m depth)	% total habitat surface	>80%	Maintenance
Dynamics (stability, range, shrinking) of meadow at the lower distribution range	Typology of lower limit of meadow distribution	Advancing	Maintenance
Conservation index (at 15 m depth)	Index (Conservation Index - CI)	> 0.9	Maintenance
Meadow density (at 15 m depth)	Shoots per m ²	>500	Maintenance

¹³⁰ Government Gazette: Series II, No 1807/22.03.2023

4 Example from Bulgaria

Parameters for setting the specific conservation objectives for the species *Puffinus yelkouan* in the site BG0002077 Bakerlata¹³¹.

Parameter	Unit	Target value	Additional information	Site-specific conservation objectives
Population: Size of the migratory population	Number of individuals	At least 20 individuals	The target value is set on the basis of data from the SDF and data from eBird. The quantity of individuals passing during migration is highly dependent on weather conditions. The species' presence in the area is irregular during migration.	Maintaining the number of migrating individuals in the area to at least 20 through maintenance of foraging habitats
Habitat of the species: Area of suitable foraging habitats of the species	Ha	At least 21110	The species feeds in the Bay of Burgas. Determined on the basis of the % contribution of habitat N01-Marine sites and bays. The area in the site is 21110 ha.	Preservation and maintenance of the habitat types in the site to at least 21110 ha.
Habitat of the species: Ecological status of water bodies with habitats of the species by using biological quality element 'Fish' under the WFD	5 step scale for ecological status	1– High/ 2 – Good	Fish are covered by studies under the Water Framework Directive, using a biological quality element 'Fish'. The ecological status of water bodies according to the biological quality element Fish is assessed on a 5-level scale: Ecological status 1– High 2– Good 3– Moderate 4– Poor 5– Bad The monitoring of internal and coastal waters is carried out by the Basin Directorate 'Black Sea area' annually on defined monitoring points.	Maintaining and/or improving the ecological status of water bodies with appropriate habitats for the species, at values 2– Good or 1– High.

¹³¹ For more information see: <https://natura2000.egov.bg/EsriBg.Natura.Public.Web.App/Home/Natura2000ProtectedSites>

ANNEX 2. STAKEHOLDER INVOLVEMENT IN ESTABLISHING FISHERIES MANAGEMENT MEASURES

Co-creating the marine reserve with small-scale fishers in Cap d'Agde MPA, France

The Cap d'Agde Marine Protected Area (MPA) is a Natura 2000 site in the Gulf of Lion, southern France. It spans 6152 hectares, encompassing various habitats of community interest, such as *Posidonia* meadows, coralligenous rock, infra-littoral rock, soft substrates, and underwater volcanic rocky plateaus. Concerns emerged due to threats to the park's biodiversity, the declining fish catches, and conflicts between fishermen and diving centres over marine space use. These issues highlighted the need for better conservation measures and the establishment of a marine reserve. Monitoring of Natura 2000 site through different indicators also supported strengthening habitat protection. Consequently, a marine reserve, designated as a restricted fishing area or "Cantonement de pêche", was co-created by Natura 2000 managers and local stakeholders, including small-scale fishers and recreational groups.

Workshops and interviews with small-scale fishers aimed to understand their expectations, gather data on fishing activities, and assess their willingness to contribute to the management of fishing within the MPA.

Simultaneously, the MPA team established five indicators (ecological, social, economic, and management) to determine the reserve's location. Using data from fishermen and marine habitat maps, the MPA managers drafted various scenarios for the marine reserve. These were evaluated against the previously defined indicators.

The proposed scenarios were presented to all Agde professional fishermen in a meeting to confirm the reserve's location and boundaries.

After establishing the initial perimeter of the marine reserve with the fishermen, the MPA teams engaged with local stakeholders, including scuba-diving centres, recreational fishermen associations, recreational fishing companies and spearfishing association, to further refine the project. The diving sector received additional consultations since the proposed reserve included coralligenous diving sites. Following these discussions, the managers modeled a final perimeter, which the Steering Committee of the Natura 2000 site of the Agathoise coast approved.

The final validated scenario of the reserve is a 310-hectare pentagon, protecting 46% of the MPA's coralligenous habitat and includes a strictly protected no-take area, where diving, fishing, anchoring, and dredging are prohibited.

ANNEX 3. SURVEILLANCE AND MONITORING OF FISHING ACTIVITIES

Integrated remote surveillance system for Gyaros island in the Cyclades, Greece

An innovative and integrated remote surveillance system designed to combat illegal fishing has been installed on Gyaros Island, Greece. WWF Greece developed and operated the system from 2015 to 2022 in collaboration with the relevant Port Authorities, utilizing cutting-edge technology.

The systems' primary objective is to enhance the surveillance of the Gyaros marine protected area (MPA), specifically the surrounding 3-nautical marine zone. By supporting the authorities responsible for managing the MPA, as well as regulatory and enforcement bodies, the system ensures compliance with applicable legislation and its associated restrictions. Equipped with radar technology, the system provides real-time detection of suspicious activity, providing detailed information on vessel speed, course, and -when identification devices are activated-the vessel's type and identity.

The remote surveillance system comprises multiple infrastructure components installed across key locations. These include the summit of Gyaros Island, the antenna park on Syros Island, the headquarters of the Central Aegean Management Unit for Protected Areas (PAMU), and the Syros Port Authority headquarters.

At the summit of Gyaros Island, the main surveillance unit is housed atop an old pillbox shelter. This unit consists of a SIMRAD radar, a high-resolution military-grade EOD-100 infrared camera, and a transmitter that relays signals to Syros. At the Syros Island antenna park, a receiver captures the signal from Gyaros and transmits it to the Central Aegean PAMU office, where surveillance personnel receive real-time alerts, ensuring prompt response to potential violations.

As of 2024, under the Memorandum of Cooperation between the Ministry of Environment and Energy, the Ministry of Maritime Affairs and Insular Policy, and WWF Greece, the Natural Environment and Climate Change Agency (NECCA) has assumed ownership and management of the system.

ANNEX 4. APPLICATION OF FISHERIES CONSERVATION MEASURES TO PROTECT REEFS AND SANDBANKS, BALTIC SEA

In the German exclusive economic zone (EEZ) in the Baltic Sea, the following SACs have been designated to protect the habitat types 'Sandbanks which are slightly covered by sea water all the time' (1110) (Sandbanks) and/or Reefs (1170): Fehmarn Belt, Kadet Trench, Western Rønne Bank, Adler Ground and Pomeranian Bay with Odra Bank.

In accordance with Article 4(4) of the Habitats Directive, once the sites are entered in the Community list, Germany is obliged to implement the necessary conservation measures as soon as possible, and within six years at the latest, to ensure the maintenance or restoration of the favourable conservation status of species and habitats.

One of the most important conservation objectives in the SACs in the German EEZ is to maintain and restore the near-natural character of benthic communities characterised, in particular, by long-lived species.

The German report on the conservation status of species and habitats protected under the Habitats Directive for the 2013-2018 reporting period showed that the habitat types Sandbanks (1110) and Reefs (1170) in the marine Baltic biogeographical region have an unfavourable conservation status. Fisheries management measures are therefore just part of what is required to reach the sites' conservation objectives and to improve the habitats' conservation status.

According to the Habitats Directive, improving the condition of habitats in the designated SACs is the most important tool for achieving a favourable conservation status for the Reefs and Sandbanks habitat types. As commercial fisheries in the EEZ are governed by the common fisheries policy, conservation measures to comply with Article 6(1) of the Habitats Directive must be implemented as management measures under Articles 11 and 18 of the CFP Regulation.

To implement Articles 6(1) and (2) of the Habitats Directive, in September 2017, Germany issued protected area ordinances and thereafter has developed area-specific management plans with measures to regulate human activities within the protected areas, e.g. sand and gravel extraction, wind farms and shipping, aimed at reaching favourable conservation status of protected features. These management plans were developed within a national coordination process and came into force in February 2022, while a maritime spatial plan for the German EEZ had been adopted in 2021. The plan secures the protected areas in spatial planning, which is also very important for MSFD implementation.

In accordance with Articles 11 and 18 of the CFP Regulation, the following fisheries management measures were proposed in 2022 to protect the habitat types 1110 Sandbanks and 1170 Reefs in the SACs in the German EEZ in the Baltic Sea:

- 1) Fehmarnbelt SAC: Year-round exclusion of fisheries with mobile bottom-contacting gear in sandbank and reef areas to protect the habitat types 1110 Sandbanks and 1170 Reefs.
- 2) Kadetrinne SAC: Year-round exclusion of fisheries with mobile bottom-contacting gear in reef areas to protect the habitat type 1170 Reefs.
- 3) Westliche Rönnebank SAC: Year-round exclusion of fisheries with mobile bottom-contacting gear in the entire SAC site to protect the habitat type 1170 Reefs.
- 4) Adlergrund SAC: Year-round exclusion of fisheries with mobile bottom-contacting gear in the entire SAC site to protect the habitat types 1110 Sandbanks and 1170 Reefs.
- 5) Pommersche Bucht mit Oderbank SAC: Year-round exclusion of fisheries with mobile bottom-contacting gear in sandbank areas to protect the habitat type 1110 Sandbanks.

The exclusion zones have been proposed to ensure that not only the protected benthic habitat types but also adjacent areas and areas in between the structures are protected (e.g. Fehmarn Belt, Kadet Trench) from the negative impacts of mobile bottom-contacting gear.

These fisheries management measures proposed by Germany were the basis of negotiations with other Member States having a management interest in relevant fisheries to agree on a joint recommendation according to Article 11(3) of the CFP Regulation.

The formal process started with the first meeting on 6 April 2022 and after a series of meetings and consultation of the Baltic Sea Advisory Council, the proposal was adopted by the BALTFISH High Level Group on 22 August 2022. On 7 September 2022, BALTFISH submitted a joint recommendation proposing fisheries conservation measures to partly protect the Fehmarnbelt, Kadetrinne and Pommersche Bucht mit Oderbank SACs; and the entire sites of Westliche Rönnebank and Adlergrund in the German EEZ.

Following the submission of this joint recommendation, the STECF assessed it in November 2022¹³² and concluded that the proposal represents a positive initiative that will provide enhanced protection for the reefs and sandbanks in the areas concerned.

The Commission amended Delegated Regulation (EU) 2017/117¹³³ laying down conservation measures in certain areas of the Baltic Sea to introduce the new measures proposed by Germany.

¹³² Scientific, Technical and Economic Committee for Fisheries (STECF) – 71st Plenary report (STECF-PLN-22-03). Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/016673, JRC132078.

¹³³ Commission Delegated Regulation (EU) 2017/117 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778 (OJ L 19, 25.1.2017, p. 1–9).

ANNEX 5. ASSESSING THE RISK OF IMPACT OF COMMERCIAL FISHING ACTIVITIES ON SPECIES AND HABITATS IN MARINE NATURA 2000 SITES

1 Risk assessment of fishing activities degrading marine habitats and impacting Natura 2000 conservation objectives (France)

In 2014, the French Ministry of Environment requested that PatriNat¹³⁴ coordinate a project assessing the sensitivity of French (mainland) benthic habitats to anthropogenic pressures, drawing on expertise from the wider scientific community. The methodological framework for marine habitat sensitivity evaluation, terminology, habitat and pressure units, as well as guidance on how to use the resulting evaluations, were presented in the methodological report published in 2019¹³⁵.

The methodology was developed to produce standardised results and to be consistent with other equivalent European methodologies to support risk/vulnerability assessments at a local, regional, national and international scale, including under the Habitats and Marine Strategy Framework Directives and OSPAR Convention.

The main objective of this method is to assess the risks of commercial marine fishing activities degrading natural habitats of Community interest (and species habitats) that have been designated as Natura 2000 sites, considering the issues at the local level and addressing them consistently on a national scale.

The analysis makes it possible to identify the extent to which commercial marine fishing activities impinge on the conservation objectives of Natura 2000 sites and to prioritise any action that is required. The analysis offers a range of outputs, including data on fishing activities and habitats, maps and reports. The methodology is implemented in two steps.

Step 1: Qualify the risk of degradation of marine habitats of Community interest

The assessment of the risk of degradation of marine habitats is based on several parameters related to the distribution and sensitivity of habitats, as well as the distribution and types of fishing activities in the Natura 2000 site. The approach to risk assessment consists of geographically superimposing (in GIS) three levels of information at the scale of the Natura 2000 site:

- 1) distribution of benthic habitats of Community interest in the Natura 2000 site;
- 2) description of fishing activities and associated pressures within the Natura 2000 site;
- 3) identification of interactions between fishing activities and habitats of Community interest in the site.

The interactions between commercial fishing activities and marine habitats of Community interest are identified by defining the probability of habitat exposure – in terms of sensitivity – to the pressures generated by fishing gear through geospatial analysis. The habitat degradation risk matrix is obtained by integrating the matrix on sensitivity of benthic habitats (established by the National Museum of Natural History in 2016) with the matrix on physical pressures generated by fishing gear, established by IFREMER in 2019).

In the analysis, five habitat sensitivity levels are integrated with the four levels of pressure exerted by the activity, resulting in four possible risk levels (no risk, small, moderate, strong).

¹³⁴ <https://www.patrinat.fr/>

¹³⁵ <https://www.natura2000.fr/analyse-risque-natura-2000-peche-professionnelle>

Step 2: Qualify the risk of undermining conservation objectives of the Natura 2000 site

If the results of Step 1 qualify the risk as moderate or strong, they are then integrated with local ecological parameters and local parameters relating to commercial fishing activities.

The level of importance of each habitat defined in the site's management plan (Documents d'objectifs – DOCOB) reflects the Natura 2000 site's importance in achieving favourable conservation status for the habitat and must therefore be specifically considered in the local parameters. For a better appreciation of the local context, other parameters are taken into account, chosen according to the available data, in a concerted manner and based on expert opinion.

Finally, if an analysis concludes that there is a strong or moderate risk of undermining the site's conservation objectives, then the effects are likely to be significant, so management measures – in particular regulatory measures – must be put forward for adoption by the competent authorities.

2 Common methodology for assessing the impact of fisheries on marine Natura 2000 sites (Marine Expert Group)

In 2012, building on relevant methodologies across the regional seas, a common EU approach for assessing the impact of fisheries on marine Natura 2000 sites was developed and discussed in the Commission's marine expert group. It allows site managers to prioritise and focus efforts on regulating fishing activities considered to have potential impact on Natura 2000 sites. This approach entails the review of available relevant information to categorize the potential impacts and associated management options. The methodology is implemented in two steps (Figure 2):

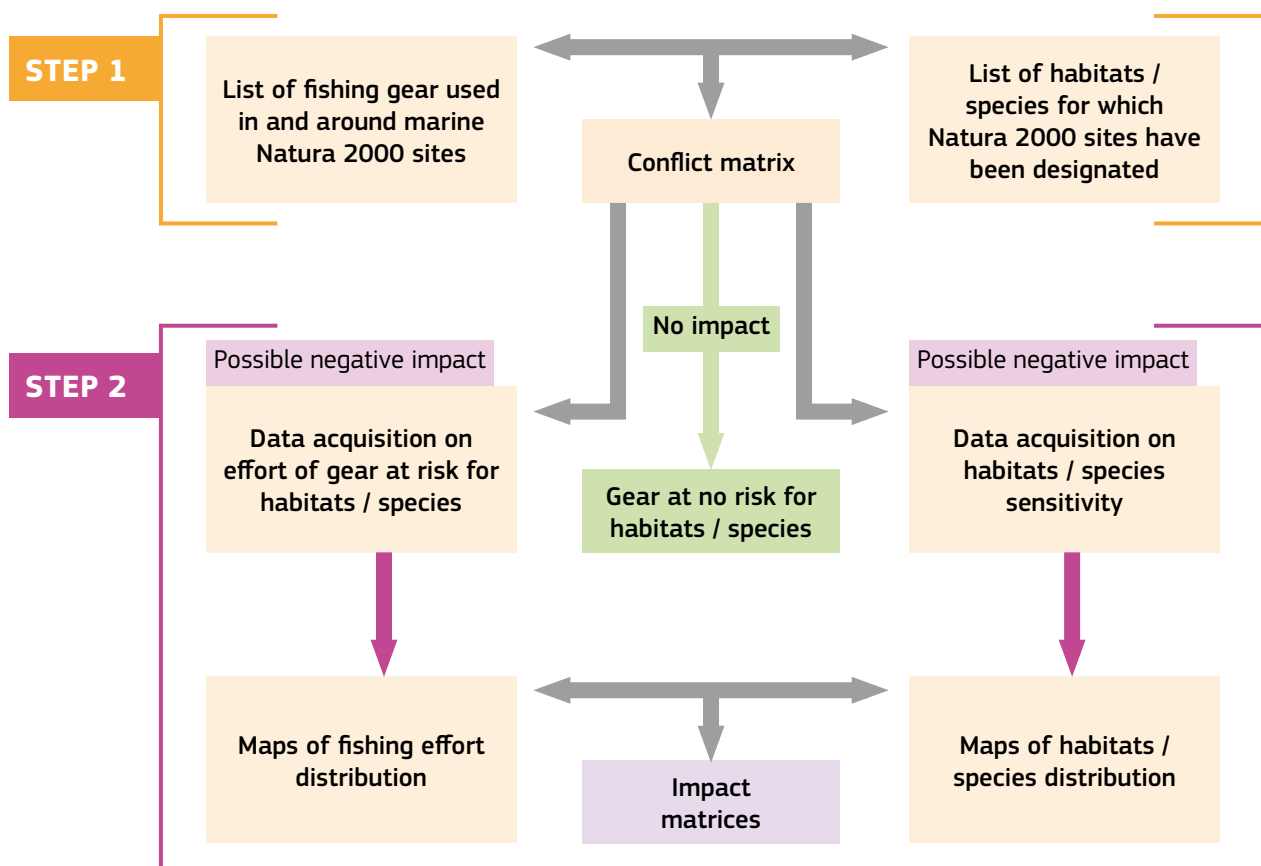


Figure 2. Methodology protocol for assessing the impact of fisheries on marine Natura 2000 sites.

Step 2: Semi-quantitative assessment of impacts

The necessary information for this step is the distribution of habitats and of species and their habitats (for which the site has been designated), and the distribution of fishing activity in the Natura 2000 sites. In particular:

1. Spatial and temporal distribution of habitats/species.

Information collected should as far as possible contain the following:

- ecology of habitats (including the habitats' typical species) and species for which the site has been designated;
- specific conservation objectives for each of the features for which the site is designated;
- description of the spatial and temporal distribution of habitats (including the habitats' typical species) and species for which the site has been designated;
- data on habitats/species, including condition and favourable conservation condition and status;
- importance of the site at national and biogeographical region for the conservation of relevant habitats/species;
- data on species population and on usage of the site by species for activities such as foraging, breeding, etc.;
- intolerance, recoverability and subsequent sensitivity of habitats/species population to fishing disturbance.

On the basis of the information collected, summary forms with the description of specific habitats/species or group of species and maps of the distribution of habitats sensitive to fishing pressure inside the marine Natura 2000 site and of the distribution of species populations should be produced. If relevant, maps of the use of the site by species in different seasons should also be produced.

2. Spatial and temporal distribution of fishing effort and fishing intensity

For each type of gear identified in the previous phase, spatial and temporal data on fishing effort inside the Natura 2000 sites for at least the previous three years should be collected. In practice, this means using logbooks and, for larger vessels, automatic location communicators (e.g. vessel monitoring systems -VMS).

It needs to be emphasised that the spatial and temporal distribution of the total fisheries occurring within the Natura 2000 sites should include all vessels, i.e. both with and without automatic location communicators (satellite-tracking devices), belonging to the national and to the international fleets operating in the areas.

On the basis of the information collected, maps of the distribution of fishing intensity (defined as fishing effort per unit area per unit time) inside each marine Natura 2000 site during the different seasons (winter, spring, summer, autumn) should be produced. Cumulative maps relative to the total fishing intensity during the four seasons should also be produced.

Data on the spatial and temporal distribution of fishing activities and associated pressures should be combined with spatial data on habitats and species distribution and with temporal data on the biological cycle of the species of EU interest. Overlay analyses will determine potential conflict/no-conflict zones in relation to the demarcated boundaries of the Natura 2000 sites (presence/absence

of conflict). Various maps, specific per habitat types/species will be produced. The next phase will be to assess whether potential conflicts exist between conservation objectives and the use of the area.

3. Sensitivity of habitats/species populations to fishing pressure

The analysis of habitats and species sensitivity to the different aspects of fishing pressure should be carried out where potential conflicts exist between conservation objectives and the use of the area (i.e. fishing overlap in space and in time with the distribution areas of the relevant habitats and species).

The link between the results of conflict analysis and of the sensitivity assessment for the habitat/species that could be impacted will enable habitat/species population sensitivity to be assessed and ranked according to the actual fishing disturbance. The ranking of the impact of fisheries on habitat/species should be carried out by expert judgement as a combination of fishing intensity and sensitivity, and should take into account the conservation status of the relevant habitats/species. *Ad hoc* expert workshops could be organised with this aim.

A comprehensive impact matrix, including the rank of the impact and the description of the type of impact, should be filled in for each Natura 2000 site for each habitat/species, which have a potential conflict with fishing activities.

3 Overview of the potential interactions and impacts of commercial fishing methods on marine habitats and species protected under the EU Habitats Directive

In 2014, another document was prepared and discussed in the marine expert group, which contributed to the qualitative assessment required for Step 1 and the first stage of Step 2 of the 'Common methodology for assessing the impact of fisheries on marine Natura 2000' (see annex 5.2). It offers an overview of the interactions, pressures and impacts of commercial fishing methods on marine Natura 2000 habitats and species (in groups), summarises the sensitivity of Natura 2000 habitats and species to different fishing methods, and gives an overview of their vulnerability. It should be noted that this report was a selective review at the time of its publication and not a consideration of the impacts of all types of fishing gear on all European marine habitats and species. It should also be noted that this is a continuing field of research with ongoing international studies and regular publications.

Peer reviewed and grey literature sources have been used to prepare summaries of:

- 1) the potential physical, chemical and biological pressures associated with various fishing methods,
- 2) the interaction of Natura 2000 features with these pressures,
- 3) the possible vulnerability arising from the use of particular fishing gear on habitats and species protected in Natura 2000 sites.

The information should be refined in view of national considerations (such as the most relevant fisheries or any gear modifications) and may be used by Member States for Step 2 – the preparation of site-specific matrices of the impact of fisheries on Natura 2000 sites and features.

Cumulative effects are site-specific and have therefore not been considered in the generic matrices. Sensitivity is not evaluated directly, nor quantified in this document, therefore habitat sensitivity assessments will ultimately be required for more precise evaluations of vulnerability on a site basis.

The document contains tables that provide a checklist of the potential impacts of different fishing methods on Natura 2000 habitats and species. Some or all these species and habitats may be present in particular locations, and the significance, if any, of resulting impacts will depend on the sensitivity of the habitat and species, as well as local circumstances, including its recoverability and variety within habitat types. These considerations mean that it is essential to undertake a site-specific analysis of impacts to underpin any management proposal although if there is strong evidence that damage from a gear/activity to a designated feature is ubiquitous, further assessment may not be necessary.

The matrices show that marine Natura 2000 habitats and species are potentially vulnerable to a range of physical, chemical and biological pressures associated with different fishing methods (see Table 3 and 4). In the case of probable interaction, the habitat or species is known to be vulnerable to the fishing method/pressure in most instances. In the case of possible interaction, they may be vulnerable in some cases or in particular locations or situations. There are also interactions which are considered unlikely or where there is currently insufficient information to draw any conclusion. These tables may be used by Member States as part of their assessment of fishing activities that have the potential to affect the habitats and species which are protected in marine Natura 2000 sites.

Table 3. Matrix summarising potential vulnerability of Natura 2000 habitats to different fishing methods.

			Sandbanks	<i>Posidonia</i> beds	Estuaries	Mudflats & Sandflats	Coastal lagoons	Large shallow inlets/ bays	Reefs	Submarine structures made by leaking gas	Boreal Baltic narrow inlets	Submerged or partly submerged sea caves
GEAR CLASS	GEAR GROUP	GEAR TYPE										
Dredges	Dredges	Boat dredge										
		Mechanised/suction dredge										
Trawls	Bottom trawls	Bottom otter trawl										
		Multi-rig otter trawl										
		Bottom pair trawl										
		Beam trawl										
	Pelagic trawls	Midwater otter trawl										
		Midwater pair trawl										
Hooks & lines	Rods & lines	Hand & pole lines										
		Trolling lines										
	Longlines	Drifting longlines										
		Set longlines										
Traps	Traps	Pots & traps										
		Fyke nets										
		Stationary uncovered pound nets										
Nets	Nets	Trammel nets										
		Set gillnet										
		Drift net										
Seines	Surrounding nets	Purse seine										
		Lampara nets										
	Seines	Fly shooting seine										
		Anchored seine										
		Pair seine										
		Beach & boat seine										

Probable vulnerability	
Possible vulnerability	
Unlikely vulnerability	
Limited information	

Probable: the habitat is known to be vulnerable to the fishing method in most instances

Possible: the habitat may be vulnerable to the fishing method in some cases or in particular locations or situations

Table 4. Matrix summarising potential vulnerability of Natura 2000 species/species groups to different fishing methods.

			Cetaceans		Seals				Turtles		Fish					Seabirds, wildfowl & waders
			Harbour porpoise	Bottlenose dolphin	Grey seal	Common seal	Ringed seal	Med monk seal	Loggerhead turtle	Green turtle	Sturgeon (Adriatic & Atlantic)	Houting	Lamprey (sea, river)	Shad (Twiate, Allis, Caspian, Pontic, Black Sea, Azov)	Canestrini's goby	
GEAR CLASS	GEAR GROUP	GEAR TYPE														
Dredges	Dredges	Boat dredge														
		Mechanised /suction dredge														
Trawls	Bottom trawls	Bottom otter trawl														
		Multi-rig otter trawl														
		Bottom pair trawl														
		Beam trawl														
	Pelagic trawls	Midwater otter trawl														
		Midwater pair trawl														
Hooks & lines	Rods & lines	Hand & pole lines														
		Trolling lines														
	Longlines	Drifting longlines														
		Set longlines														
Traps	Traps	Pots & traps														
		Fyke nets														
		Stationary uncovered pound nets														
Nets	Nets	Trammel nets														
		Set gillnet														
		Drift net														
Seines	Surrounding nets	Purse seine														
		Lampara nets														
	Seines	Fly shooting seine														
		Anchored seine														
		Pair seine														
		Beach & boat seine														

Probable vulnerability

Possible vulnerability

Unlikely vulnerability

Limited information

Probable: the habitat is known to be vulnerable to the fishing method in most instances

Possible: the habitat may be vulnerable to the fishing method in some cases or in particular locations or situations

ANNEX 6. APPLICATION OF MEASURES TO AVOID DETERIORATION OF REEF STRUCTURES BY FISHING ACTIVITIES, BALTIC SEA

Member States are responsible for ensuring the favourable conservation status of designated marine habitats and species in their respective Natura 2000 network and for taking appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the Natura 2000 site has been designated.

In Denmark, the main provisions of Article 6 of the Habitats Directive for protection and management of the Natura 2000 sites are implemented by each sector, i.e. the competent authority responsible for implementing the necessary measures identified through the Natura 2000 management plans. The Danish Ministry of Food, Agriculture and Fishery is the responsible authority for formulation of fishery regulation as well as fishery control and enforcement of implemented management measures. In June 2008, the Fisheries Act was amended to include the Habitats Directives provisions¹³⁶.

Denmark has designated 97 marine Natura 2000 sites in Danish territorial waters in the Western Baltic Sea, Kattegat, Skagerrak and the North Sea. The designation has been done in accordance with Administrative Order No 408/2007¹³⁷ and subsequent amendments to it, which designates the overall conservation objectives as the basis for managing Natura 2000 sites. A total of 65 Natura 2000 sites have been designated for reef structures (habitat codes: H1170 (Reefs) and H1180 ('Submarine structures made by leaking gasses', also known as bubbling reefs)).

In December 2011 nature management plans were adopted for sites designated before 2010¹³⁸. With the adoption of the plans, the sites were also designated as SACs. In December 2012 the Danish Ministry of Environment made the Natura 2000 management plans public. The management plans contain a description of the habitats and species for which the site has been designated, the current conservation status of these habitats and species, possible threats and actions to be taken. In all management plans for marine Natura 2000 sites designated for reefs, actions should be taken in relation to fishing activities with mobile bottom-contacting gear.

In spring 2011 the Ministry of Food, Agriculture and Fisheries/Danish AgriFish Agency launched the initiative to protect reef structures from fishing activities in Natura 2000 sites located in the Danish part of the Western Baltic Sea between the baseline and 12 nautical miles:

- 1) Munkegrund (EU site code: DK00VA304)
- 2) Hatterbarn (EU site code: DK00VA255)
- 3) Ryggen (EU site code: DK00VA253)
- 4) Broen (EU site code: DK00VA256)
- 5) Ertholmene (EU site code: DK007X079)
- 6) Davids Banke (EU site code: DK00VA308)
- 7) Bakkebrædt and Bakkegrund (EU site code: DK00VA310).

The aim of the proposal was to ensure adequate protection of designated reef structures from fisheries activities and thereby contribute to the obligation of achieving favourable conservation status (since site-specific conservation objectives had not yet been formulated for Danish marine habitats) for the habitat types with code H1170 in accordance with Article 6(2) of the Habitats Directive, stating that Member States shall take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas

¹³⁶ Fisheries Act: <https://www.retsinformation.dk/Forms/r0710.aspx?id=121218>

¹³⁷ Administrative Order No 408, 1 May 2007: <https://www.retsinformation.dk/Forms/R0710.aspx?id=13043>

¹³⁸ Administrative Order No 1114, 25 November 2011: <https://www.retsinformation.dk/Forms/R0710.aspx?id=139270>

have been designated. According to the Natura 2000 plans for the seven sites, fishing activities with mobile bottom-contacting gear is specified as a threat to reef structures¹³⁹ and as a possible threat to sandbanks.

The conservation status of the reef structures in the seven sites has been assessed as 'unfavourable' due to physical disturbances and a relatively high level of nutrients in the water column. It is generally agreed that fishing activity with mobile bottom-contacting gear has an impact on reef structures, both in terms of physical disturbance to the reef structures as well as to the biodiversity found at the reefs.

The prohibition of fishing activity with mobile bottom-contacting gear in areas mapped as reefs (habitat code H1170) was proposed. The reef structures mapped in the Natura 2000 sites would be protected from the impact of fishing activity by enacting buffer zones around reef structures, which means putting a 240-metre buffer zone in place around the mapped reef structures. The Danish AgriFish Agency has received scientific advice from the Danish Technical University's Institute for Aquatic Resources (DTU Aqua) on the appropriate method to be used.

The intention of the Danish government (initiating Member State) was to take measures i.e. with respect to fishing activities exercised by all vessels, including fishing vessels carrying the flag of other EU Member States. In order to apply these measures to all vessels, Denmark, as the initiating Member State, has in accordance with Regulation 1380/2013 of the common fisheries policy, consulted Germany and Sweden¹⁴⁰, the Baltic Sea Advisory Council, the International Council for the Exploration of the Sea (ICES) and the Commission, national fishermen associations/organisations and non-governmental organisations (NGOs).

Denmark initiated a procedure with Sweden and Germany to adopt a joint recommendation for conservation measures in seven Natura 2000 sites in the Kattegat and three sites in the Baltic Sea in summer 2014. On 13 March 2015 Denmark, Germany and Sweden submitted a joint recommendation to the Commission for fisheries conservation measures to protect reef structures in Danish Natura 2000 sites in the Baltic Sea. The joint recommendation has been adopted by the Commission through a delegated act (Delegated Regulation 2017/117/EU)¹⁴¹.

¹³⁹ Management Plans: http://www.naturstyrelsen.dk/Naturbeskyttelse/Natura2000/Natura_2000_planer/Se_Planerne/

¹⁴⁰ Sweden and Germany have fishing rights in the Danish part of the Western Baltic Sea within 12 nautical miles.

¹⁴¹ Commission Delegated Regulation (EU) 2017/117 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778 C/2016/5562 (OJ L 19, 25.1.2017, p. 1–9).

ANNEX 7. APPLICATION OF APPROPRIATE ASSESSMENT TO FISHING ACTIVITIES

1 Cockle fishing in Ireland

Dundalk Bay contains both a special protection area (SPA IE0004026) and a special area of conservation (SAC IE0000455). Cockle (*Cerastoderma edule*) fishing potentially affects habitats and waterbirds in Dundalk Bay SAC and SPA.

The Fisheries Committee of the Dundalk Local Advisory Committee (LAC) developed and submitted a draft Fisheries Natura Plan (FNP) for cockle in Dundalk Bay 2021–2025. This draft FNP set out the management arrangements to be undertaken by vessel owners holding permits to fish cockle in Dundalk Bay. It followed on from previous five-year plans. The draft FNP set out the terms under which a cockle fishery can take place, such as the minimum biomass of cockles below which the fishery would not open, a Total Allowable Catch (TAC), a closure when minimum catch rates are reached (to avoid excessive depletion), and a closure on 1st November each year to protect overwintering birds. It also specified operational restrictions for participants in the fishery, such as minimum landing size of cockles, a cap on the total daily catch and the specification of gear which can be used in the fishery.

The draft FNP was submitted in March 2021 to the Minister for Agriculture, Food and the Marine, who determined on the need for appropriate assessment of the draft FNP. Having regard to guidance from the European Commission and existing case law, the Minister determined that the draft FNP may have significant impacts on Natura 2000 sites and therefore appropriate assessment pursuant to Article 6(3) of the Habitats Directive was required in advance of determining whether the FNP could be adopted.

An appropriate assessment report was prepared by the Marine Institute in line with the European Union (Birds and Natural Habitats) (Sea-fisheries) Regulations 2013 (S.I. No. 290 of 2013). The appropriate assessment report assessed the potential ecological effects of the proposed FNP on designated habitats and species in the Dundalk Bay SAC and SPA. It also examined the potential effects on the site arising from two fisheries operating in combination (razor clam and cockle fisheries).

The appropriate assessment report and appendices, including the draft FNP, were published in May 2021, for a six-week public consultation period. Additionally, the Minister for Housing, Local Government and Heritage and the Minister for Environment, Climate and Communications were provided with the opportunity to make representations on the draft FNP and the assessment report. Five submissions were received as part of the public consultation. Two of the submissions were from fishers, while the other three were from the National Parks and Wildlife Service, Birdwatch Ireland and Irish Wildlife Trust. The Marine Institute provided a response addressing in detail the relevant issues raised in these submissions.

Finally, in July 2021, the Minister for Agriculture, Food and the Marine, taking account of the appropriate assessment report submitted by the Marine Institute, the submissions received as part of the public consultation and the response from the Marine Institute on the relevant issues raised in the submissions determined that the Fisheries Natura Plan for cockle (*Cerastoderma edule*) in Dundalk Bay 2021–2025, as modified by his Department in accordance with Regulation 6(2) of S.I. No. 290 of 2013, would not affect the integrity of designated habitats and species in Dundalk Bay SAC and SPA, and adopted the modified FNP.

For further information see: <http://www.fishingnet.ie/sea-fisheriesinnaturaareas/>

2 *Ensis* fishing in the Netherlands

The Noordzee kustzone, the Voordelta, the Vlakte van de Raan and Westerschelde, have all been designated as special areas of conservation (SACs) under the Habitats Directive. With the exception of the Vlakte van de Raan, these areas have also been designated under the Birds Directive. The protection of Dutch Natura 2000 sites is regulated by the Nature Protection Act¹⁴². In the management plans for these respective Natura 2000 sites, it is defined that bottom-disturbing fishing activities are subject to an authorisation under the Nature Protection Act.

The blade fishery (American swordschede, *Ensis leei*) is a fishing activity carried out in the Dutch coastal zone. *Ensis* fishing is a bottom-contacting activity involving the extraction of shellfish from the ecosystem and involves contact with the soil. On this basis, it cannot be ruled out beforehand that *Ensis* fisheries in the Natura 2000 sites of the Noordzee kustzone, the Voordelta, the Vlakte van de Raan and Westerschelde would have a significant impact on species and habitats in these Natura 2000 sites.

Therefore, prior to authorisation, the potential effects of this activity on the integrity of these sites had to be assessed in an appropriate assessment. The activity assessed relates only to *Ensis* fisheries in the areas open to this fishery. Access to some areas within Natura 2000 sites is already restricted for *Ensis* fishing activities (among which about 25% of the surface area of the Noordzee kustzone Natura 2000 site).

Ensis fishing is considered as a plan or project in accordance with Article 6(3) of the Habitats Directive, that by itself, or together with other projects, can lead to significant effects on the conservation objectives of the Natura 2000 sites. In accordance with Article 6(3), this activity should therefore be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. A permit for such activity can therefore only be granted when an appropriate assessment has been conducted, the results of which find that the plan or project will not damage the natural characteristics of the respective Natura 2000 areas. A permit for such plan or project can be requested for a period of six years, after this period a new permit request must be submitted which will be subject to a new appropriate assessment procedure.

Eight fishing licences have been issued for *Ensis* fisheries in Dutch waters. All licence holders for *Ensis* fisheries are members of the Coöperatieve Producentenorganisatie Nederlandse Vissersbond U.A. (CPO NVB). In recent years, *Ensis* fishing has been carried out by four vessels. The most recent appropriate assessment was prepared in 2018 for the 2019-2023 licence period¹⁴³. With this authorisation period coming to an end at the end of 2023, a new licence application and a new appropriate assessment were prepared.

In the appropriate assessment, it was assessed whether the conservation objectives of the respective Natura 2000 sites could be negatively affected by the *Ensis* fishing. This assessment covered the effects on the integrity of the sites concerned. The appropriate assessment focussed on the possible impact of *Ensis* fishing on the quality of the H1110B habitat type ('Sandbanks which are slightly covered by sea water all the time'), which is present in all four Natura 2000 areas. The quality of a habitat type is determined by four quality elements of the habitat type. These elements are: 'vegetation types', 'abiotic cross-compliance', 'typical species' and 'other characteristics of good structure and function'.

Ensis fisheries can have an effect on the integrity of Natura 2000 sites by various means. For the purpose of determining the effects of *Ensis* fisheries on qualifying bird species, these are possible effects on the carrying capacity of the area for these species. For habitat types, the impact on the presence and abundance of typical species and on other characteristics of good structure and function of the habitat types should be investigated. Disturbances caused by fisheries may – but

¹⁴² Since January 2024, this act has been replaced by the Environment and Planning Act.

¹⁴³ https://puc.overheid.nl/natuurvergunningen/doc/PUC_763898_17/1/ (see Annex 2)

do not – ultimately change the abundance of species occurring in the fished area. If, as a result of fishing, species disappear from the fished area or new species are established, fishing will have altered the diversity of species in the area and may also have changed the composition of the biological community in the area. Whether these indirect effects are actually produced and can be observed depends on both the intensity and frequency of the direct impact of fishing and the sensitivity and resilience of the species concerned.

The possible effects that *Ensis* fishing can have on the natural characteristics of the Natura 2000 areas have been identified. These effects are: soil disturbance, mortality of benthic animals and fish because of catch, visual disturbance, disturbance caused by noise above water, disturbance caused by underwater noise and change in concentrations of toxic substances and nutrients due to emissions. The outcome of this assessment found that some effects required further assessment: the effect of soil disturbance on the quality of the H1110B habitat type and the indirect effect on shellfish-eating ducks; the effects of mortality of benthic animals and fish because of catch on the quality of H1110B habitat types and on shellfish-eating birds; the effects of visual disturbance on protected bird species.

Finally, it was concluded that, for the specific areas (and considering the areas currently closed to *Ensis* fisheries and imposed conditions) *Ensis* fisheries have no significant consequences for the natural characteristics of the Natura 2000 sites Noordzee kustzone, the Voordelta, Westerschelde and Saftinge and Vlakte van de Raan. This also applies when effects are accumulated and when considering the conservation objectives of the sites.

In 2024, a new permit request was approved by the Ministry of Agriculture, Nature and Food Quality of the Netherlands, for *Ensis* fishing within the Natura 2000 sites of Noordzee kustzone, the Voordelta, Westerschelde and Saeftinghe and Vlakte van de Raan.

For further information see: https://puc.overheid.nl/natuurvergunningen/doc/PUC_763898_17/1/

ANNEX 8. MEASURES OUTSIDE OF THE COMMON FISHERIES POLICY APPLICABLE TO FISHING VESSELS

Restrictions to mariners for the protection of the Yelkouan shearwater, Maltese archipelago

The Maltese islands are home to approximately 10% of the global population of the Yelkouan Shearwater, a seabird that can only be found in the Central and Eastern Mediterranean region. The species is listed in Annex I of the Birds Directive and has been listed as ‘vulnerable’ in the International Union for Conservation of Nature’s (IUCN) Red List of Threatened Species. It is protected by several international conservation agreements, as well as national legislation.

These vulnerable seabirds breed inside burrows in caves and on sheer cliffs between January and July. Because they are active only at night and the chicks stay inside the burrows during the day, people are not aware of them when they visit the sites. The breeding process is however impacted when large boats creating noise and light pollution approach the cliffs or enter the caves.

The Environment and Resources Authority (ERA) established a number of restrictions in line with the Birds, Habitats and Marine Strategy Framework Directives aimed at protecting threatened Yelkouan Shearwater by limiting maritime activities near nine sites around Malta and Gozo. The nine sites are: L-Irdum tal-Madonna, l-Ahrax tal-Mellieħa; Santa Marija Caves, Comino; Cominotto; St. Paul’s Islands; Majjistral Nature and History Park; Miġra l-Ferħa; Blue Grotto, Żurrieq; Ta’ Ċenċ, Gozo and Dwejra, Gozo.

The Ports and Yachting Directorate of Malta Transport has been issuing notices to mariners informing them of the restrictions¹⁴⁴. The notices were issued as a result of a partnership with BirdLife Malta, which implemented the LIFE Arcipelagu Garnija project¹⁴⁵. The Ministry for the Environment, Energy and Enterprise has also partnered with the LIFE project to promote a review of policies on outdoor lighting with a much sharper focus on light pollution in coastal and natural areas in the Maltese archipelago.

The restrictions create buffer zones around the sites, restrict lights and sounds from vessels and in some cases define their maximum speed or minimum distance of 100 m from the cliff. Anchoring is allowed for fishing and diving vessels.

For the Rđum tal-Madonna special protection area (SPA) a buffer zone of about 1.1 nautical miles from the shore has been established. Lights, other than those prescribed in the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), have to be switched off and no loud noise, other than sound signals prescribed in the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) from vessels is allowed whilst moving along this stretch of coast.

The buffer zone is a ‘no stopping zone’ for all vessels other than vessels carrying out fishing activities. Fishing activities in the area using strong lights (such as ‘lampara’) are prohibited in line with Article 4 of the Fishery Regulations (SL425.01) and Council Regulation (EC) No 1967/2006.

¹⁴⁴ <https://www.transport.gov.mt/include/filestreaming.asp?fileid=8435>; <https://www.transport.gov.mt/include/filestreaming.asp?fileid=9871>

¹⁴⁵ <https://birdlifemalta.org/arcipelagugarnija/>

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