

FISHERIES MEASURES FOR MARINE NATURA 2000 SITES

A consistent approach to requests for fisheries management measures under the Common Fisheries Policy

It is the responsibility of Member States to designate protected areas in the marine area under national jurisdiction and to establish conservation measures in order to protect vulnerable and endangered habitats and species. In order to maintain or restore the conservation status of relevant habitats or species, Member States should assess if there is a need for fisheries management measures. Whenever a Member State requests regulatory fisheries management measures in order to fulfil conservation objectives, the Commission will evaluate the request and as appropriate take the necessary measures under the Common Fisheries Policy, based on scientific advice and after broad consultation with stakeholders, especially through the Regional Advisory Councils (RACs). Moreover, Member States shall provide monitoring and control measures and a specific control and inspection programme to implement those measures.

Although the conservation of the sites may require the implementation of appropriate management measures other than fisheries measures (wind power parks and other energy projects, oil and mineral prospection and exploitation, geological survey, maritime traffic, military activities, ecotourism, etc.), these other measures are not addressed in this document.

1. Designation of Natura 2000 sites¹

The Natura 2000 network comprises Special Protection Areas classified under the Birds Directive 79/409/EEC and Special Areas of Conservation designated under the Habitats Directive 92/43/EEC. Details on the establishment of a marine network of conservation areas under Natura 2000 can be found in the "Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives"².

1.1. Classification of Special Protection Areas under the Birds Directive

Under the Birds Directive³, Member States select the most suitable sites and designate them directly as Special Protection Areas (SPAs). These sites then automatically become part of the Natura 2000 network.

The identification and delimitation of SPAs must be entirely based on scientific criteria. Member States have a margin of discretion in determining the most appropriate criteria. However, they must then fully apply those criteria in a way that ensures that all the 'most suitable territories', both in number and surface area, are designated. Site-specific data are communicated to the Commission (to DG Environment) by using Standard

¹ Responsible department with the European Commission: DG Environment

² http://ec.europa.eu/environment/nature/natura2000/marine/docs/marine_guidelines.pdf

³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1), as last amended by Council Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

Data Forms. On the basis of information provided by the Member States, the European Commission determines if the designated sites are sufficient to form a coherent network for the protection of the vulnerable and migratory species.

1.2. Designation of Special Areas of Conservation under the Habitats Directive

The responsibility for proposing "Sites of Community Importance" (SCI) under the Habitats Directive⁴ lies with the Member States. They carry out comprehensive assessments of each of the habitat types and species present on their territory. The choice of sites is a purely scientific process, based on standard selection criteria specified in the directive. Site-specific data are communicated to the Commission by using Standard Data Forms and maps.

On the basis of the proposed national lists, the Commission, in agreement with the Member States, must adopt the lists of SCIs. To that effect scientific seminars are convened by the Commission in order to analyse the Member States' proposals in a transparent way. They are open to the Member States concerned and to experts representing relevant stakeholders, users, and environmental NGOs. These seminars are supported by the European Environment Agency, assisted by the European Topic Centre on Biological Diversity, which is based in Paris, France.

These expert seminars aim to establish if sufficient high-quality sites have been proposed by each Member State to ensure the favourable conservation status of each habitat type and species throughout their range in the EU. The objective is to establish a list of SCIs for the regional seas, applying a consistent approach across the Member States.

Once the lists of SCIs have been adopted, it is for the Member States to designate all of these sites as "Special Areas of Conservation", as soon as possible and within 6 years at most as required by the Habitats Directive. They should give priority to those sites that are most threatened and/or that are of most importance in conservation terms. During this period, Member States must take the necessary management or restoration measures to ensure the favourable conservation status of those sites.

2. Fisheries management measures under the Common Fisheries Policy (CFP)⁵

Depending on the conservation objectives⁶ of the marine SPAs and SCI (the "Natura 2000 sites"), Member States may envisage the implementation of certain fisheries management and control measures. When drafting their proposal for measures, Member States are encouraged to ensure a good coordination between fishery and environmental authorities at Member State level and with stakeholders.

Different procedures apply depending on the jurisdiction in which the Natura 2000 site is located:

⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7), as last amended by Council Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

⁵ Responsible department within the European Commission: DG Maritime Affairs and Fisheries

⁶ The information provided according to the Standard Data Form established by the Commission forms the basis for a Member State's establishment of the site's conservation objectives.

a) The site is located within the 12 nautical miles of the Member States' coast:

Member States can take non-discriminatory measures to minimise the effects of fishing on the conservation of the marine ecosystem within 12 nautical miles of their coast, if the Community has not adopted measures specifically for this area. Any measures proposed within the 12 nautical miles must be no less stringent than existing Community legislation and must be in line with the CFP.

Member States are free to take measures for conservation and management of stocks in waters within their 12 nautical miles, under the conditions mentioned above, if they apply solely to their own fishing vessels.

However, if these measures are liable to affect the vessels of other Member States, these proposed measures can only be adopted after the Commission, other Member States and the Regional Advisory Councils (RAC) concerned have been consulted on a draft of the measures, accompanied by an explanatory memorandum⁷. The draft of the measures should be a draft of a legal act, having a legal format prescribed by the Member State's national law. Thus, the draft of the measures should be in a separate annex and in a legal format ready to be confirmed by the Commission. According to the CFP⁸, the Member States and the RACs concerned have only 5 working days upon receipt of notification to submit any written comments to the Commission. The Commission in turn has 15 working days to confirm, cancel or amend the measures proposed upon receipt of notification⁹. These deadlines must be respected.

The time span between the official notification and the opportunity for the Member States and the RACs concerned to submit any comments is very short. Therefore the Commission strongly encourages Member States to provide the concerned RACs and Member States with comprehensive information on proposed sites and fisheries management measures from the beginning of the process. This can be done through a pre-notification document that can be sent to concerned parties well in advance. This would allow everybody to have sufficient time to prepare any written comments to the Commission as well as for the Commission to adopt its Decision in time.

b) The site is located offshore, i.e., beyond 12 nautical miles of the Member States' coast:

In this case the proposed measures fall under the scope of the Common Fisheries Policy, for which the Community has exclusive competence. Therefore, Member States must address a **formal request** of adoption of such measures to the Directorate General of Fisheries and Maritime Affairs (DG MARE) of the Commission and must follow the procedure outlined below.

2.1 Submitting a formal request for fisheries management measures

When?

⁷ Regulation (EC) 2371/2002, Article 9

⁸ Regulation (EC) 2371/2002, Article 8.3

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It is advised that the requests are made at an early stage in the designation process, for example as soon as a site has been or is in the eminence of being proposed as a Natura 2000 site. It is strongly recommended that Member States submit all their requests concerning designated sites in the same regional sea at the same time, in order to facilitate the consultation process and to allow assessing requests from whole regions in a simultaneous and a coherent manner.

What and how?

Member States must submit to DG MARE a **formal request** for fisheries management measures for their Natura 2000 sites located outside their territorial waters (outside the 12 nautical miles of a Member States' coast).

Scientific and technical information backing Member States requests for fisheries management measures under the CFP must include information on all the following:

- 1) Comprehensive description of the natural features including distribution within the site.
- 2) Scientific rationale for the site's selection in accordance with the information provided in the Natura 2000 data form. Intrinsic value of its features. Specific conservation objectives.
- 3) Basis for the spatial extent of the site boundary clearly justified in terms of conservation objectives.
- 4) Threats to habitats and species from different types of fishing gear. List of other human activities in the area that could damage the habitats.
- 5) Fleet activity in the area and in the region, distribution of fleets (by nation, gear and species), and information on target and by-catch species, all over the last 3 years.
- 6) Seasonal trends in fisheries over the last 3 years.
- 7) Proposed fisheries management measures to maintain the habitats features in favourable condition. Are they proportionate and enforceable? Other conservation measures that apply to the area.
- 8) Control measures envisaged by the Member State, possible ecological and control buffer zones to ensure site protection and/or effective control and monitoring measures.
- 9) Measures to monitor and assess the maintenance and/or recovery of the features within the site.
- 10) Coordination with neighbouring Member States as appropriate.
- 11) Evaluation of possible displacement of fishing effort and impact on new areas.

Important to note for the points 8), 9) and 10) that the Member States shall include a specific control and inspection plan, clearly setting objectives, benchmarks, guidelines for implementing the rules, monitoring, control and surveillance procedures and ensure cooperation with other Member States.

Who else should be involved?

It is recommended to involve the Regional Advisory Councils (RACs) at an early stage, as well as the relevant authorities that are competent for fisheries control at and near the sites. Member States are recommended to provide the relevant RACs with comprehensive information on proposed sites and fisheries management measures. While there is no legal obligation for Member States to consult the RACs, such early consultation can help avoid delays in the final adoption of measures. Moreover, RACs should play an important role in providing information about fisheries activities. RACs can examine the possibility of technical improvements and provide additional important data, such as information about fisheries activities and information from fisheries not obliged to carry Vessel Monitoring System (VMS). Without this information there is a risk that the other criteria specified in section 2.3 will not be met.

2.2 Request for scientific advice from bodies like STECF, ICES, or both

The Commission, if the Member States has not already done so, will provide the International Council for the Exploration of the Seas (ICES) or the Scientific, Technical and Economic Committee for Fisheries (STECF) with all available scientific information and will request scientific advice.

ICES geographical scope does not cover certain waters under the jurisdiction of Member States (Mediterranean, Black Sea, Madeira, Canaries and outermost regions). Therefore, STECF should be requested to address cases outside ICES Convention area. If advice is provided by ICES, STECF may be requested to validate or review ICES advice.

The final objective is the establishment of a consistent network of protected areas, which often extend across several MS marine regions. Therefore it would be beneficial if Member States would coordinate closely with adjacent Member States in order for these scientific bodies to assess a region as a whole rather than dealing with requests on a case-by case basis. The Commission will favour a coordination process to improve the consistency, in content and timing, of the proposals from member States relative to specific regions.

Some of the difficulties specific to the marine environment are the lack of scientific knowledge and the cost of carrying out research. Scientific information backing the request will not always be complete.

Starting in 2009, the new Framework for Data Collection will offer better possibilities to collect and provide access to data on fisheries and on fleet activity in particular¹⁰.

ICES/STECF should be requested, inter alia, to:

- Review scientific basis for conservation needs.
- Review and evaluate all relevant information on fishing activities in the proposed areas, to assess possible impact to these fisheries of closure or other potential management measures.

¹⁰ Regulation (EC) No 199/2008

- Evaluate whether the boundary of the proposed area is appropriate for delimiting the fisheries management measures needed to protect the habitats for which the area has been proposed.
- On the basis of known impacts of fishing gears active in the vicinity, evaluate what management measures would be suitable to achieve the conservation objectives of the proposed protected areas.
- Evaluate possible effects of the displacement of fishing effort to other areas.
- Review possible monitoring needs; identify data gaps.

2.3 How will the Commission draft a final proposal?

Upon reception of Member States proposal for fisheries measures for a Natura 2000 site, the Commission analyses the information provided by Member States. If there is a need for additional information the Commission services may organise a meeting with the relevant Member State's authorities. This allows Member States to present the scientific and technical information backing the request and to have an exchange of views with all relevant units in both DGs, including control experts.

The Commission considers the proposed fisheries management measures, taking into account all available information reviewed by scientific bodies and presents a proposal for specific fisheries management measures within the CFP. CFP measures take into account the principles of proportionality and non discrimination, apply to all MSs and are therefore the best option at EU level.

Four principles guide the adoption of fisheries measures under the CFP: consultation, proportionality, non discrimination and effective control.

a) Consultation with stakeholders

Once the Commission has established that there is a need to take fishing restriction measures in order to protect relevant vulnerable habitats or species in line with the Habitats Directive, it will start consultation internally as well as with stakeholders and with the relevant RACs, in particular if this has not been done already by the Member State.

Consultations cover mainly the scientific basis of the request, the extent of proposed areas, the need to ban certain gear, assessment of potential impacts of the closures on fleet and fisheries, enforceability of measures proposed and potential effects of displacement of fishing effort.

In line with minimum standards for consultation¹¹, the Commission shall ensure that the consultation is carried out within a reasonable timeframe..

b) Proportionality

¹¹ COMMUNICATION FROM THE COMMISSION COM(2002) 704 final, 11/12/2002, Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission

The marine Natura 2000 sites are designated to meet conservation objectives. They are not fisheries management tools, nor are they designed specifically to enhance commercially important species. The Commission will have to ensure that an appropriate balance between sustainable exploitation of resources and the need to conserve important habitats is found. In order to achieve this balance, the Commission will identify those fishing activities that have a significant impact on the environment and that therefore must be banned. Fishing activities with a minor impact could be allowed. The proposed measures should be consistent with the conservation objectives for the sites concerned.

In addition, in line with the CFP, the Commission must take into account the **precautionary approach to fisheries management**, according to which the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species, and non target species and their environment. The precautionary approach is particularly relevant in this case, as explained above, as some of the difficulties specific to the marine environment is the lack of scientific knowledge and the cost of carrying out research in this field.

c) Non discrimination

DG MARE will ensure that the proposed measures are not discriminatory towards any Member State. In order to ensure consistency, non discrimination and best implementation of regulatory measures, Member States sharing a vulnerable feature should coordinate when designating marine sites with underwater features that extend across several Member States. The Commission would prefer to analyse whole regions simultaneously as much as possible.

Assessing regions as a whole generates several advantages. It avoids having different management measures for the same sort of marine feature within one region. Furthermore, in order to avoid displacement of fishing effort to neighbouring areas, management measures should be similar for the whole region and ideally should be implemented at the same time. This regional approach would be the best solution to ensure a 'level playing field' in the interpretation and implementation of fisheries measures under the CFP in support of the implementation of the Habitats Directive and to avoid discrimination.

d) Monitoring and control measures

Member States must ensure effective control, inspection and enforcement of the rules of the CFP. Consequently, Member States should include a proposal for control measures in their request for Natura 2000 marine areas. Member States should also define the implementation strategy, i.e. the specific control plan for the relevant areas.

Fisheries management measures proposed in Natura 2000 areas must be controllable in a cost-effective way. Areas in offshore waters are more difficult to monitor. Small and scattered areas should be avoided. Areas should be big enough and should include a buffer zone to prevent vessels entering the area unnoticed. The area to be protected plus the buffer zone constitute the "controlled waters".

Current rules need to be reinforced and modified by:

- Defining which fishing vessels and which fishing gears and under which temporary restrictions they could operate. Special fishing permits including the characteristics defined could be considered.
- Defining a control safety zone around the areas to be preserved.
- Instituting a system of alarm in the control buffer zone by modifying the existing rules of VMS transmission.

For effective control, a control security area might have to be defined around each one of the closed areas. The size of the area or distance from protection boundaries will be dependent of the transmission rate and assumed vessel speed. For example up to 24 nautical miles around each area, considering 12 knots an average speed for a vessel and two hours from one transmission of the position to the next.

Other control provisions might be needed to allow the coastal Member States to detect any vessel with a course and speed towards the area and a system of alarm should be installed in the Fisheries Monitoring Centre, where VMS information arrives, to detect those vessels in the vicinity of the area. Otherwise, vessels could transit and/or fish in the area without being detected, making the protected area irrelevant as instrument to protect the habitat we seek to protect.

2.4 Adoption of measures

If a Member State can prove that there is a need for immediate or urgent protection of its area, DG MARE may propose **temporary protection** measures for the site under the CFP. These measures can only be applied for one year at the time. Temporary protection measures can be introduced in a proposal for amendments to the "TAC and Quota" Regulation of the relevant year. In this case once the consultation process has been completed, the proposal will have to be adopted by the Council of Ministers.

However, **note that this process can only continue until the end of 2008** through amendments to TAC and Quota Regulation for 2008 and proposals of the measures for TAC and Quota Regulation 2009. This is an option on the basis of the practice followed so far but this remains a temporary option provided that the legislative processes can be effectively completed prior to the entry into force of the Lisbon Treaty (i.e. by 31 December 2008 if the ratification process stay on schedule). This means that the corresponding legislative acts must have been adopted, signed and published by the said date at the latest.

As part of the revised Technical Measures Regulation, the Commission's proposal includes a fast track procedure which would allow adoption of **permanent** protection measures within 3 months through Comitology. This depends on its approval by the Council. If this proposal is not approved, then protection measures will have to be adopted by the Council and the European Parliament by way of co-decision under the new Treaty of Lisbon. This would mean that the adoption of measures could take two years or more.

If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate

action, the Commission, at the request of a Member State or on its own initiative, may decide on **emergency measures**. Emergency measures can only last for 6 months and can only be renewed once for an additional 6 months. These emergency measures are only considered under exceptional circumstances.