

Presented to BSAC ExCom on 29.1.19

**Prepared by the BSAC Secretariat for ExCom**

**Natura 2000 and fisheries management measures in the Baltic Sea**

**Background to the task**

The BSAC Secretariat was asked to gather information that could answer some fundamental questions concerning fisheries management measures, so as to prepare for situations where the BSAC is invited to comment on specific draft fisheries management plans and measures in Natura 2000 areas in the Baltic Sea. There are four questions and these come later on (from page 5 and onwards).

The four questions are:

1. Which fisheries management measures are already in place or are planned at the moment in the Baltic? Short report from every member state or relevant bodies which already made a compilation)
2. Do we see a proper use of European law and the guiding principles in the countries? (Mapping of habitats (i.e. new German handbook on reef mapping), databases on conservation status etc.)
3. Is there a sufficient socio-economic impact assessment? (This is something where the fisheries sector representatives may be able to add information)
4. Control measures

**Overall EU framework for fisheries management measures in Natura 2000 sites**

Natura 2000 is a network of core breeding and resting sites for rare and threatened species, as well as some rare natural habitat types which are protected in their own right. It stretches across all 28 EU Member States, both on land and at sea. The aim of the network is to ensure the long-term survival of Europe's most valuable and threatened species and habitats, listed under both the Birds Directive and the Habitats Directive.

Over the years, the EU has established an increasingly robust policy framework to address the multiple challenges facing its marine environment and to ensure a more sustainable ecosystems-based approach to the use of its marine resources. The Habitats and Birds Directives, along with the Marine Strategy Framework Directive, are the environmental pillar of the wider Integrated Maritime Policy.<sup>1</sup>

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<sup>1</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm)

It is the responsibility of Member States to designate protected areas in the marine area under their 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 Advisory Councils (ACs). Member States must also provide monitoring and control measures and a specific control and inspection programme to implement those measures.<sup>2</sup>

### **Information on Natura 2000 and fisheries measures for Natura 2000 sites**

This overview presents the legal framework for the establishment of Natura 2000 sites and implementation of fisheries management. It also presents the developments in the Member States.

The BSAC is not in a position to formulate advice on fisheries management for every Natura 2000 site in the Baltic Sea. Nevertheless, it should be possible follow the developments in the Member States and observe the work as an advisory body with an overview of the whole Baltic Sea and to the extent possible give input and advice. Natura 2000 is a common European regulatory framework and its application should aim at securing a level playing field. The European Court decision C 683/16 makes clear that a (restrictive) measure must add to conservation goals of Natura 2000 areas<sup>3</sup>.

### **More on Natura 2000 and fisheries<sup>4</sup>**

One of the objectives of the EU Common Fisheries Policy (CFP) is to promote a more coherent ecosystem-based approach for all fisheries.

With the entry into force of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (the CFP "Basic Regulation"), new dedicated rules apply for the adoption of conservation measures necessary for compliance with Union environmental legislation.

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<sup>2</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish\\_measures.pdf](http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf)

#### <sup>3</sup> **Judgement**

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=202841&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4223211>

#### **Opinion**

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=198774&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4223211>

<sup>4</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm)

These rules are set out in Article 11, "*Conservation measures necessary for compliance with obligations under Union environmental legislation*" in conjunction with the general provisions of Article 18, "*Regional cooperation on conservation measures*". The Commission has issued a Staff Working Document (SWD(2018) 288 final)<sup>5</sup> providing guidance on the establishment of conservation measures for Natura 2000 sites and MSFD-relevant measures under Article 11 of the CFP Regulation, in order to facilitate the preparation and adoption of fishery measures for those areas, in particular through joint recommendations.

To facilitate the tasks of Member States, a common methodology for assessing the impact of fishing activities on marine protected areas was developed and which also gives the basis for the development of fisheries measures with a view to ensuring compliance with applicable provisions under the Habitats and Birds Directives and the CFP.

Different procedures apply depending on the jurisdiction in which the Natura 2000 site is located<sup>6</sup>:

- 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 memorandum<sup>7</sup>.

- 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 Commission.

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<sup>5</sup> [Staff Working Document on the establishment of conservation measures under CFP for Natura 2000 sites and MSFD-relevant measures](#) [bg](#) [da](#) [de](#) [el](#) [es](#) [et](#) [fi](#) [fr](#) [hr](#) [it](#) [lt](#) [lv](#) [mt](#) [nl](#) [pl](#) [pt](#) [ro](#) [sl](#) [sv](#)

<sup>6</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish\\_measures.pdf](http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf)

<sup>7</sup> Regulation (EC) 2371/2002, Article 9

### **What the Basic Regulation includes on environmental legislation**

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

The CFP introduced the regionalisation to shape a number of measures adopted through delegated acts, in particular conservation measures needed to comply with obligations under EU environmental legislation (Art.11)

The CFP provides for the possibility to establish:

-fish stock recovery areas to contribute to the conservation of living aquatic resources and marine ecosystems;

-conservation measures that are necessary for compliance with **Union environmental legislation – Birds and Habitat Directives and MSFD** (Art.11);

-conservation measures for purposes other than described in Art. 11;

-emergency measures in case of serious threat to the conservation of marine biological resources or to the marine ecosystem.

#### **Article 11 Conservation measures necessary for compliance with obligations under Union environmental legislation<sup>8</sup>**

The **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 (May 2018)**<sup>9</sup> has been elaborated by Commission services after consultation with the Member States' experts and the relevant stakeholders. The aim of this document is to describe good practices on the elements to be considered by the Member States when preparing joint recommendations for the adoption of conservation measures under the Common Fisheries Policy (CFP) to comply with their obligations pertaining to Article 6 of the Habitats Directive, Article 4 of the Birds Directive and Article 13 (4) of the Marine Strategy Framework Directive (MSFD). It aims to recall the rules and procedures relating to the submission of a joint recommendation by the Member States, in order for the Commission to adopt conservation measures by means of a delegated act pursuant to Articles 11(2) and 11(3) of the CFP.

<http://ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf>

### **There is a commitment to consult the Advisory Councils**

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<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1380&from=EN>

<sup>9</sup> [Staff Working Document on the establishment of conservation measures under CFP for Natura 2000 sites and MSFD-relevant 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.<sup>10</sup>

Article 11 of the BR does not state explicitly that Advisory Councils should be consulted but Article 18.2. does.

### **Article 18.2**

For the purpose of paragraph 1, Member States having a direct management interest affected by the measures referred to in paragraph 1 shall cooperate with one another in formulating joint recommendations. They shall also consult the relevant Advisory Councils. The Commission shall facilitate the cooperation between Member States, including, where necessary, by ensuring that a scientific contribution is obtained from the relevant scientific bodies.<sup>11</sup>

"It is recommended to involve the (Regional) Advisory Councils (RACs – now ACs) 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 ACs (now ACs) with comprehensive information on proposed sites and fisheries management measures.

While there is no legal obligation for Member States to consult the ACs, such early consultation can help avoid delays in the final adoption of measures. Moreover, ACs should play an important role in providing information about fisheries activities. The ACs can examine the possibility of technical improvements and provide additional important data, such as information about fisheries activities."<sup>12</sup>

We need to look at **Article 20**<sup>13</sup> referring to the Member State measures within the 12 nautical mile zone and where the Commission and Advisory Councils should be consulted if the measures proposed also affect other Member States.

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

### **Commitment mapping by Member States**

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<sup>10</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish\\_measures.pdf](http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf)

<sup>11</sup> [ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf](http://ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf)

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<sup>12</sup> [http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish\\_measures.pdf](http://ec.europa.eu/environment/nature/natura2000/marine/docs/fish_measures.pdf)

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1380&from=EN>

## **ELEMENTS OF GOOD PRACTICE REGARDING THE INFORMATION TO BE PROVIDED BY THE MEMBER STATES WITH THE SUBMISSION OF THE JOINT RECOMMENDATIONS<sup>14</sup>**

”Scientific advice accompanying the joint recommendations should be reliable and where appropriate include a detailed mapping of the protected habitats.”

The majority of the Member States in the Baltic are still at the mapping stage and have not developed fisheries measures in Natura 2000 sites.

**These are the fundamental questions that the BSAC can investigate and prepare answers to.**

- 1. Which fisheries management measures are already in place or are planned at the moment in the Baltic? Short report from every member state or relevant bodies which already made a compilation)**

The Commission has provided an overview of the joint recommendations received as well as the Delegated Regulations now in force<sup>15</sup>. There are currently two Delegated Regulations for the North Sea and two for the Baltic. It also lists on its site other recommendations made by the Member States.

**The BSAC Secretariat** has contacted the Member States to ask what fisheries management measures are already in place in the Member States or at the planning stage.

### **DENMARK**

#### **Information received from Martin Grynberg Andersen, Ministry of Foreign Affairs:**

In Denmark the marine Natura 2000 network comprises 97 sites, of which 46 are located in the Baltic Region (IIIb, IIIc22 and III d24). So far, there has been a focus in Denmark on protecting the habitat types in which fisheries activities risk damaging habitat types 1170 reefs and 1180 bubbling reefs.

In total, there are 65 N2000 sites designated for the protection of habitat type 1170 or 1180, of which 42 are located in the Baltic Sea.

Of the 42 sites, fisheries management measures have been implemented in 26 sites, either as a delegated regulation or national order. The remaining sites are expected to be protected by national legislation by 1st July 2019.

More information on the implemented fisheries management measures is on the homepage of the Danish Fisheries Agency: <https://fiskeristyrelsen.dk/english/commercial-fisheries/natura-2000-and-fisheries-regional-processes/>

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<sup>14</sup> [ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf](https://ec.europa.eu/environment/nature/natura2000/marine/docs/Marine%20SWD%20288%20final.pdf)  
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<sup>15</sup> [https://ec.europa.eu/fisheries/cfp/fishing\\_rules\\_en](https://ec.europa.eu/fisheries/cfp/fishing_rules_en)

## More information

For the implementation of the EU Nature directives (Habitat and Birds Directives), Denmark has designated 97 marine Natura 2000 sites in Danish territorial waters of the Western Baltic, Kattegat, Skagerrak and the North Sea. A total of 65 sites have been designated for reef structures with the following habitat codes: H1170 (reefs) and H1180 (submarine structures made by leaking gasses).

Here's the map of all the NK2 areas:

[http://miljoegis.mim.dk/cbkort?selectorgroups=themecontainer%20Natura2000%20fredning&mapext=277608%206024994.2%201064040%206422715.8&layers=theme-gst-dtkskaerm\\_daempet%20ef\\_fugle\\_bes\\_omr%20ramsar\\_omr%20ef\\_habitat\\_omr%20theme-pg-natura\\_2000\\_omraader&mapheight=969&mapwidth=1925&profile=miljoegis-natura2000](http://miljoegis.mim.dk/cbkort?selectorgroups=themecontainer%20Natura2000%20fredning&mapext=277608%206024994.2%201064040%206422715.8&layers=theme-gst-dtkskaerm_daempet%20ef_fugle_bes_omr%20ramsar_omr%20ef_habitat_omr%20theme-pg-natura_2000_omraader&mapheight=969&mapwidth=1925&profile=miljoegis-natura2000)

The Danish Ministry has a Forum for informing and getting input on NK2 and related matters. It started in 2010 and meetings have been held once a year. The BSAC has been at most of the meetings since 2014. The Ministry uses this forum to give information on the areas designated and on the processes being followed to develop fisheries management measures, plus broader issues such as nature conservation and management, research etc. It also reports on the replies received to consultations, as well as informing on status with the development of management measures in other MS. The meeting reports (in Danish, except for the report from 23/5/16) are here:

### Meeting reports from the Forum:

<https://fiskeristyrelsen.dk/raad-og-udvalg/dialogforum-for-natura-2000-og-havstrategi/moedereferater/>

[https://fiskeristyrelsen.dk/media/9421/proposal\\_for\\_fisheries\\_management\\_measures\\_n2000\\_north\\_sea\\_version\\_060215.pdf](https://fiskeristyrelsen.dk/media/9421/proposal_for_fisheries_management_measures_n2000_north_sea_version_060215.pdf)

A map showing implemented and proposed fisheries regulation measures in coastal NK2 areas can be made available on request to the BSAC Secretariat.

## ESTONIA

**Information received from Kaire Märtin, Ministry of Environment:** Outside Estonian territorial waters no NATURA 2000 areas have established and there are no plans to establish any in the near future. The territorial waters are only open to Estonian vessels. There are some restrictions in protected areas and these are mainly gear restrictions.

The Estonian BSAC representative has confirmed that with regard to the Natura 2000 areas – there is nothing in Estonian legislation to regulate it further. Fishing and hunting are not regulated in Estonia under Natura 2000, so there are no additional rules or regulations.



All 7 Natura 2000 areas in Latvia are located in the coastal water zone and in accordance with the Latvian fisheries rules, no trawling is allowed in the coastal waters. So there is very low or no fisheries impact on the Natura 2000 areas and no specific fisheries rules need to be introduced.

**More information:**

[https://www.daba.gov.lv/public/eng/protected\\_areas/natura\\_2000/](https://www.daba.gov.lv/public/eng/protected_areas/natura_2000/)

The headline message on the website is that including of the land property in the *Natura 2000* territory does not mean termination of any management. However, economic activities are more or less restricted, depending on the purpose of the creation of the protected area.

It's in English and they have on the site a list of the areas that they've designated, Latvian *Natura 2000* – List of Protected Nature Territories of European Significance

Latest update of website 19<sup>th</sup> December 2013

It also gives a link to a Natura 2000 interactive map, that the European Environment Agency has created:

<http://natura2000.eea.europa.eu/>

## LITHUANIA

**Information received from Darius Bartišius, Ministry of Agriculture:**

There are no specific fisheries management measures set in Lithuanian waters in Natura 2000 sites and marine protected areas in the Baltic. However, the Lithuanian fisheries operational programme 2014-2020 (the measure “Limiting the impact of fishing on the marine environment and adapting fishing to the protection of species”) provides funding for the fishing gears aimed at avoiding catches of mammals and birds, protected by Directives 92/43/EEC and 2009/147/EC. It is obligatory to ensure gear selectivity and avoid physical damage to predators. New gears should be used in Natura 2000 areas as well.

There are certain requirements for fishing net placement (seasonal and depth) for the protection of birds in the marine protected areas. They are regulated by the legal act “Maritime commercial fisheries regulation”.

In Lithuanian:

<https://www.e-tar.lt/portal/lt/legalAct/TAR.B4CCAA435AC7/sSNGHxliqR>

<http://senas.am.lt/VI/index.php#a/6802>

In English: <http://senas.am.lt/VI/en/VI/index.php#a/782>

## **POLAND**

<http://natura2000.gdos.gov.pl/natura2000/index.php?lang=pl>

### **Received from A. Ginalski, Deputy Department Director, General Directorate for Environmental Protection**

In general, no conservation measures regarding fisheries have been introduced in Polish waters as a result of designated Natura 2000 sites.

So far, draft conservation plans have been prepared for the Natura 2000 sites under the supervision of Maritime Offices in Gdynia and Szczecin.

Most of them still require amendments to be made by the Maritime Offices, either in Standard Data Forms for the sites or in the draft conservation plans.

Work on establishing one plan (for the site Zalew Wiślany and Mierzeja Wiślana PLH280007) has been already started as it does not require any further amendments.

The Maritime Office in Słupsk has started to prepare the plan for the only site located in the entire Polish EEZ.

## **SWEDEN**

### **Received from Malin Wilhelmsson, Swedish Agency for Marine and Water Management**

There is no specific information on conservation measures/fisheries regulations in Marine Protected Areas in the Baltic within the Common Fisheries Policy Articles 11 and 18. Sweden has worked with such processes in the Skagerrak and this has resulted in a Commission delegated act. It is currently working with measures in the Kattegat (Halland) together with two other Member States (DE and DK) and in which the NSAC is closely involved. Proposed measures include both no-take zones as well as zones with restricted gear types in order, for example, to prevent damage to habitats from bottom contacting gear or by-catch of harbour porpoise and sea birds. The regulations can address both commercial and/or recreational fisheries.

Work is foreseen to implement fisheries conservation measures in marine protected areas where necessary by 2020. These processes within the CFP require dialogue both with stakeholders and formal consultations with Member States concerned. They will contact the BSAC in due time when there are proposals that concern the Baltic.

The Swedish Environment Protection Agency has information on Natura 2000 here:

<https://www.naturvardsverket.se/Var-natur/Skyddad-natur/Natura-2000/>

An interactive map of the nature protected areas in Sweden is here:

<http://skyddadnatur.naturvardsverket.se/>

## HELCOM

Information on Natura 2000 can also be found at the HELCOM website. However, HELCOM focuses on the Baltic Sea Strategy Action Plan and Marine Protected Areas. Overlapping HELCOM MPAs and Natura 2000 sites can be of different shape and size depending on the protection targets. HELCOM MPAs are restricted to the coastal zone and marine area, while Natura 2000 areas may also cover inland areas. The Natura 2000 network protects natural habitats and species deemed important at EU level, whereas the HELCOM MPAs network aims to protect marine and coastal habitats and species specific for the Baltic Sea.

### All on Natura 2000 from HELCOM

<http://www.helcom.fi/Pages/search.aspx?k=Natura%202000#Default=%7B%22k%22%3A%22Natura%202000%22%2C%22o%22%3A%5B%7B%22d%22%3A1%2C%22p%22%3A%22Write%22%7D%5D%7D>

<http://www.helcom.fi/action-areas/marine-protected-areas/HELCOM-MPAs-and-Natura-2000-areas/>

(the newest dated 2015)

The Secretariat feels that in order to address the following questions 2, 3 and 4, the BSAC should hold a meeting, invite Member States and Commission representatives and have thorough discussions.

- 2. Do we see a proper use of European law and the guiding principles in the countries? (Mapping of habitats (i.e. new German handbook on reef mapping), databases on conservation status etc.)**

The Commission has now further developed its guidelines. The Danish fisheries administration could comment in the light of all the experience gained so far.

- 3. Is there a sufficient socio-economic impact assessment? (This is something where the fisheries sector representatives may be able to add information)**

- 4. Control measures**