



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
The Director General

Brussels
MARE.D3/KJ

Mr Ole Toft
Director of Fisheries
Ministry of Environment and Food
Slotsholmsgade 12
1216 Copenhagen K
Denmark

Dear Mr Toft,

Thank you for your letter of 5 November 2019 concerning the interpretation of articles 12 and 13 of the Common Fisheries Policy (CFP) Regulation (our reference *Ares(2019)6836987*).

You are asking about the possibility to adopt emergency measures under the CFP, in particular whether the provisions under Articles 12 and 13 thereof can be invoked to protect the marine environment against the effects of beam trawling in the Danish part of the North Sea and Skagerrak, especially in relation to Natura 2000 sites.

As this is a question of complex and legal nature, we needed to consult several services, and this has caused some delay in responding to your letter. Our views as described further are without prejudice to the interpretations issued by the EU Court of Justice.

General views

Under the CFP Regulation (Article 11), conservation measures - such as those restricting fishing activities in a marine protected area - that are necessary for complying with specific obligations under Union environmental legislation (Habitats Directive, Birds Directive and Marine Strategy Framework Directive) may be adopted either by the Member States (where they do not affect fishing vessels of other Member States), or by the Commission through delegated acts, following joint recommendations from Member States.

A Member State may also take, under Article 20 of the CFP Regulation, non-discriminatory measures for the conservation and management of fish stocks and the maintenance or improvement of the conservation status of marine ecosystems within 12 nautical miles provided that the Union has not adopted measures addressing such issues.

Moreover, pursuant to Article 15 of the new Technical Measures Regulation, the regional annexes can be modified/supplemented via Commission Delegated Acts (based on Joint Recommendations) to make the fishing methods and the gears more selective to minimise the negative impact of fisheries on marine ecosystems.

Furthermore, in the event of a serious threat to the conservation of the marine biological resources or to the marine ecosystem that requires immediate action, the Commission (Article 12) or the Member State in its own waters (Article 13) may adopt emergency measures to alleviate that threat.

Hence, provided that the specific legal requirements are fulfilled, it is possible to establish restrictions on the beam trawling in marine protected areas designated under Union environmental legislation.

On your specific questions

What would constitute an ‘emergency measure’ instating an immediately applicable ban on beam trawling in the Danish part of the North Sea and Skagerrak?

What requirements would be set in terms of rationale and documentation in order to justify the use of Articles 12 and 13 of the CFP?

Emergency measures may be taken if:

- there is evidence of a serious threat to the conservation of the marine biological resources or to the marine ecosystems **and**
- that serious threat requires immediate action.

Specifically, the Commission may adopt such **emergency measures** under Article 12 of the CFP Regulation on “duly justified imperative grounds of urgency relating to a serious threat to the conservation of the marine biological resources or to the marine ecosystem based on evidence”. The Commission can do so at the reasoned request of a Member State or on its own initiative.

Member States may adopt the emergency measures under Article 13 of the CFP Regulation “on the basis of evidence of a serious threat to the conservation of marine biological resources or to the marine ecosystem relating to fishing activities” in waters under the sovereignty or jurisdiction of that Member State that require immediate action.

In both cases the evidence of the serious threat and of the need to take immediate action should be based on the **best available scientific advice, in accordance with Article 3(c) of the CFP Regulation**. The rationale and the documentation would need to be based on appropriate evidence supporting both the existence of a serious threat and the urgency of taking immediate action in order to alleviate that threat..

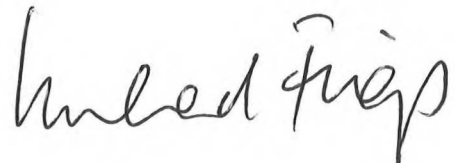
Although the Commission or the Member State (in its waters) is empowered to adopt emergency measures, this should be used in exceptional (and urgent) circumstances, as has recently been done for Eastern Baltic Cod. Emergency measures are not conceived as a general management tool, and should in particular, not replace management measures taken by Member States unilaterally or through regionalisation, involving the regional levels as well as regional stakeholders in fisheries management decisions. It also needs to be stressed that the emergency measures are temporary in nature and therefore would not represent a permanent solution to ensure protection of the marine environment.

On the request for information in relation to special obligations and possibilities to invoke emergency measures in marine protected areas designated under Union environmental legislation

In addition to Articles 12 and 13 of the CFP Regulation, Article 11(4) establishes that the Commission is to adopt measures in cases of urgency and in the absence of a joint recommendation by the Member States, as referred to in Art.11(3) of the CFP Regulation, for measures necessary for the purpose of complying with environmental obligations under the Birds, Habitats and Marine Strategy Framework Directives.

Let me highlight that the Commission is taking the issue of negative impact of the fisheries on the marine environment seriously. The full implementation of EU fisheries and environmental law is a prominent element of the new Commission's mission letter. We will continue working with Member States on enhanced implementation of relevant provisions for the protection and conservation of marine environment.

Yours sincerely,



Bernhard FRIESS
Acting Director-General

c.c.: Tea RISOM, Fisheries Attaché, THE PERMANENT REPRESENTATION OF DENMARK TO THE EUROPEAN UNION, email: tearis@um.dk

Elisa ROLLER (MARE-D3), Maja KIRCHNER (MARE-C1),
Valerie TANKINK (MARE-E4)