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Scheveningen Group of regional North Sea Member States
Dutch Presidency - Att. Ms. Roos Strating

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NSAC Advice Ref. 11-2021

NSAC Response to the Scheveningen Group on Joint Recommendation on Fisheries Management Measures in Marine Protected Areas in the German Exclusive Economic Zone of the North Sea

This advice paper was approved by the NSAC Executive Committee on 20 April 2021 via fast-track written procedure.

1. Background

In 2016, Germany launched a national stakeholder consultation to discuss proposal for a draft Joint Recommendation (JR) and relevant information on the required fisheries management measures. Subsequently, a draft document was submitted to the EU member states¹ at the time having direct fisheries management interest in the protected areas, the North Sea Advisory Council (NSAC) and the European Commission (EC). The proposal was discussed in pre-consultation meetings with representatives of the Member States concerned. By December 2017, the Member States agreed that sufficient information was provided to proceed in accordance with Article 11 of the Regulation (EU) No 1380/2013. This resulted in the first German proposal dated 9 January 2018, which represented the basis for further negotiating process launched in March 2018 and followed by meetings of the working group and bilateral consultations. The draft Joint Recommendation was adopted in a written procedure launched on 27 November 2018 by Fisheries Directors of the regional North Sea Member States in January 2019.

On 9 November 2020, the NSAC Chair addressed a letter² to the Scheveningen Group in response to the draft JR in which it was stated that “*the current amendments to the 2018 Joint Recommendation on Natura 2000 sites in German EEZ diverge substantially from its first proposal and is without a firm scientific reasoning for such measures.*” and that as such and due to time constraints: “*the NSAC is not in a position to give advice on the present version of the joint recommendation.*”

¹ Denmark, the Netherlands, Belgium, France, Sweden, the United Kingdom of Great Britain and Northern Ireland

² Following the fact that the matter had been discussed at different levels in the NSAC. The NSAC OIGs explicitly do not agree with the contents of this letter.

In this paper we will comment on the most recent JR incorporating amendments as requested by the Commission based on the STECF report³ from 2019, which has been received by the NSAC on 26 March 2021 with a deadline for comments on 15 April 2021⁴.

We would like to thank the Scheveningen Group and the German government for the opportunity to provide advice on the revised proposal for Natura 2000 fisheries management measures in the protected marine areas of the German Exclusive Economic Zone (EEZ) of the North Sea. The time granted by the Scheveningen Group for consideration and discussion of this JR has been insufficient. Nevertheless, and on the basis of our request, the Group granted an extension to the initial deadline, for which we are thankful. Having said that, unfortunately a low degree of consensus has been reached on the matter in the NSAC and this paper reflects that. In hope to avoid rushed consultations and increase consensus building in the future, we emphasise the importance of a timely stakeholder engagement, which in the NSAC would translate to a minimum of four weeks.

2. Advice

2.1 General considerations

It is important that marine protected areas as proposed in the framework of Natura 2000 fulfil their purpose of biodiversity protection through fully implemented fisheries management. The NSAC OIGs note that designation and proper management of MPAs including No Take Zones are vital in the recovery and preservation of biodiversity and in enhancing ecosystem resilience⁵. The NSAC industry in turn notes that there are no studies confirming that in the scope of the current exercise, which is the German MPAs, these data can be extrapolated in the same way to the mentioned habitats.

The NSAC acknowledges that effectively managed marine protected areas are important policy instruments for the protection of the biodiversity. The NSAC OIGs additionally highlight that MPAs have the potential to mitigate the effects of climate change⁶ and can bring socio-economic benefits to coastal communities and fishers through a so-called spillover effect. When assumptions about spillover effect in specific area are made, an underlying socio-economic impact assessment and cost-benefit analyses should be performed. The NSAC stresses that to avoid displacement effect resulting from closed areas for fisheries and the potential increase in CO₂ emissions from fishing operations, a balanced trade-off between management measures and nature conservation is crucial. The NSAC OIGS note that the closed area's carbon uptake when undisturbed by fishing also needs to be considered.

NSAC industry further note that, regrettably and contrary to their expectations, our previous deliberations (e.g. 09-1920 Advice on the Dogger bank process⁷, the 9 November 2020 letter

³ Scientific, Technical and Economic Committee for Fisheries – 60th Plenary meeting report. [file:///C:/Users/admin/Downloads/STECF%20PLEN%2019-01%20\(1\).pdf](file:///C:/Users/admin/Downloads/STECF%20PLEN%2019-01%20(1).pdf)

⁴ Extended to 20 April 2021.

⁵ Sala & Giakoumi. (2018). No-take marine reserves are the most effective protected areas in the ocean.

⁶ IPCC Special ocean and cryosphere in a changing climate. (2019). <https://www.ipcc.ch/srocc/>

⁷ <https://www.nsrac.org/wp-content/uploads/2020/06/09-1920-NSAC-Advice-on-Dogger-Bank-Process.pdf>

to the Scheveningen Group on German EEZ⁸) have not been reflected in the recent proposal. The NSAC industry is of the opinion that, without exception, the former advice and statements remain valid. This is especially true for the fact that only a smaller part of the considered areas consists of the Natura 2000 habitats, reefs and sandbanks. Most of the areas are a national habitat category (gravel and coarse sand) which is not covered by the European legislation. The NSAC industry believes that Natura 2000 is not a framework to be used by any national category as a reason for fisheries management decisions. Moreover, the impact of fisheries on these habitats is not sufficiently documented. Conversely, NSAC OIGs specifically welcome the inclusion of species-rich gravel, coarse sand and shell-gravel, which is a biotope type protected in accordance with Section 30 of the Federal Nature Conservation Law as well as special biotope type according to Annex III of the MSFD. This is, in the opinion of NSAC OIGs, essential to achieve the conservation objectives of the entire MPA regarding the integrity of the sites, its function as an important steppingstone as well as food source for numerous protected species.

The NSAC industry are of the opinion that to this day, a valid scientific database for measures is lacking and the modifications of initial proposal from 2018 are not adequately supported. For example, the impact assessment in relation to ecological and socio-economic consequences of management measures for the purposes of the JR proposal remains inadequate. The NSAC industry further notes that information on the current environmental status, objectives to be achieved and the manner and timeframe in which the exclusion or reduction of certain fisheries quantifiably contribute to reaching the objective are lacking empirical evidence. Additionally, and according to the EU-Regulation 1380/2013, Art. 11, the necessity of the restrictions should be documented. If and when these requirements are met, a clear statement shall be made in the JR that the signed parties agree and confirm that the necessity has been shown with sufficient scientific evidence and that the requirements of the regulation 1380/2013 are thus fulfilled. This, to the understanding of the NSAC industry, has not been the case for the proposed German MPAs. In contrast to the above mentioned, the NSAC OIGs are of the opinion that enough scientific evidence is presented to underpin the JR presented.

By way of further clarification, the current infringement procedure⁹ by the EC at the European Court of Justice (ECJ) against Germany for not respecting its obligations under the Habitats Directive points to insufficient description of site specific and quantitative conservation targets and corresponding conservation measures to maintain or restore a favorable conservation status of the species and habitats. As stated in the press release, the Commission considers that the conservation objectives set for sites in Germany are not sufficiently quantified, measurable and reportable. The NSAC industry notes that, in order to measure the impact of fisheries on habitats, an evaluation of existing biological inventory in number of species, abundance, diversity and natural variability of occurrence is required.

NSAC OIGs, in turn, would like to stress that Germany cannot afford any further delay in the process and any dilution of management measures. According to Art. 6.2 of the Habitats Directive (to which Art. 11 CFP refers to) *preventative* measures must be taken in order to

⁸ See footnote 2.

⁹ Nature protection: Commission decides to refer Germany to the European Court of Justice over failure to properly implement the Habitats Directive. The European Commission Press Release from 18 Feb 2021. Accessible at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_412

avoid risk of deterioration of habitats. By continued trawling there is a clear risk of deterioration which is supported by science. If preventative measures are not put in place, it must be made certain that the activity does not undermine the integrity of the site (Art. 6.3). In this context the NSAC OIGs would like to highlight the discussion paper of the Expert Group on the Birds and Habitats Directives (“NADEG”) on shared responsibility of Member States when implementing measures under Article 6(1) and (2) of the Habitats Directive in the context of the procedure under Article 11 of Regulation (EU) 1380/2013¹⁰. It is important to note that so far none of the assessed benthic habitats of the German North Sea reaches Good Environmental Status according to the MSFD¹¹. The measures submitted can thus support the achievement of the aims of the MSFD in the German North Sea.

In relation to the aforementioned issue, the NSAC takes note from the JR text that a project has recently started to explicitly support the monitoring of the effectiveness of the implementation of fisheries management measures. The main objective of the project is a monitoring concept to analyze the conservation status of the Natura 2000 sites in the German EEZ based on the MSFD descriptors D1 biodiversity, D3 fish stocks, D4 food webs and D6 seafloor and to assess the long-term effectiveness of the exclusion of mobile bottom-contacting fishing gears on benthic habitats and communities with a Before-After-Control-Impact (BACI) approach. To offer some commentary on the research:

Firstly, it is the understanding of the NSAC industry that the conservation status shall be determined prior to implementing any restrictive measures. One of the relevant examples is proposed by the Danish fishers whose sandeel fishery in the German EEZ will be unable to utilize its quota and will have to be closed almost entirely if the JR is to be implemented. The same is believed to be true for the brown shrimp fisheries carried out by German, Belgian and Dutch fishers. The example is mentioned as this decision is void of any scientific evidence on the extent of the impact that fishing in these naturally highly variable habitats has on the areas and benthic species. Until negative impacts are proven it seems counterproductive to close these important fishing grounds *a priori*. The NSAC OIGs distance themselves from these elaborations.

Secondly, NSAC industry would like to note that the research design itself indicates the deficit of knowledge on conservation status and conservation targets in relation to benthic habitats. In other words, the baseline study against which improvement and deterioration is to be measured is lacking. It also shows that the research program was based on a decision that has not been made by the responsible administration, and now, so it seems, the exclusion of fisheries is needed to carry out the research. Here it is important to note that Natura 2000 should not be seen as a legal instrument for epistemological backing of restrictive measures. The NSAC OIGs do not agree with what is stated in this paragraph.

¹⁰ The paper states: “This shared responsibility means that, even though the primary responsibility to protect a site falls on the Member State hosting it, other Member States must cooperate if such cooperation or agreement to measures is necessary to comply with legal requirements of the Habitats (or Birds) Directives and to reach their objectives. (...) the refusal to agree could constitute an infringement of the aforementioned shared responsibility and of the principle of sincere cooperation based on the breach of the obligations laid down in Article 6(1) and (2) of Habitats Directive.”

¹¹ https://www.meeresschutz.info/berichte-art-8-10.html?file=files/meeresschutz/berichte/art8910/zyklus18/Zustandsbericht_Nordsee_2018.pdf

Additionally, and to contribute to the robustness of the proposed fisheries measures, the results of the ongoing work of ICES WKTRADE¹² on Reducing the impact of mobile bottom contacting fishing gears on seafloor habitats should be taken into account. The workshop established that there are substantial differences in fishing gears in relation to their impact on benthic fauna. By way of example, a brown shrimp fishery has been described as a “low impact fishery” in a workshop report of the ICES WKTRADE3 from 24 March 2021¹³. The NSAC OIGs are of the opinion that more substantiated science than a stakeholder workshop report [which is currently not available in the public domain] is needed to establish if brown-shrimp beam trawl gear can be considered “low-impact” with regard to benthic fauna integrity.

The NSAC industry believes that a favorable conservation status is not to be achieved by eliminating all marine activities, but rather by informed and scientifically established management measures. Furthermore, the NSAC industry find it is possible to manage the areas and at the same time take into consideration the co-existence of fisheries, the effect of which is time, habitat and activity dependent. If scientific evidence is considered insufficient, results should ideally be provided before a regulation enters into force. Consequently, if this is not followed, it should be possible to revise the regulation promptly when such evidence is established. NSAC OIGs in turn believe that a precautionary principle should be followed and that it is therefore in the responsibility of the fishery to provide proof that they are not conflicting with the conservation goals of the area.

Finally, the NSAC industry is of the position that to increase the legal security for the measures it would be appropriate to postpone the JR until the state of the scientific art is reflected and the deficiencies are removed. NSAC OIGs conversely believe that no time should be lost in implementing this JR. Once the JR is in place, it is important that sound scientific analyses are carried out on the i) fisheries impact on North Sea ecosystems as well as ii) socio-economic effects and iii) potential displacement. The NSAC consider these analyses to be essential for a sound assessment of potential long-term effects of implementation of the measures. Such detailed spatial analyses should be based on VMS/AIS-data coupled with effort, as well as logbook data on landings, bycatch and their respective value. This can provide valuable information to supplement ecological review of the measures especially as the provided background documents predate the measures suggested in the current JR.

2.2 Management considerations

The NSAC in principle welcomes well substantiated management measures with sufficient scientific backing of the proposed MPAs. Where this is not provided, for whatever reason, it is the opinion of the NSAC industry that measures should not be implemented on the basis of opinion or generalized knowledge. It is up to the proponents of the JR to provide the necessary backing, which is unbiased, specific and carried out with robust scientific methodology.

NSAC OIGs support the suggested JR but see the need for further improvements to ensure effective protection of conservation features within MPAs of the German North Sea EEZ. OIGs

¹² <https://www.ices.dk/news-and-events/news-archive/news/Pages/WKTRADE3.aspx>

¹³ The workshop report will be published in June 2021.

welcome the year-round exclusion of bottom contacting gear in “Borkum Reef Ground” (measure 5) and the vast majority of the “Sylt Outer Reef” (measure 1a), but they reject the central fisheries corridor as it weakens the ecological connectivity of reef structures and coarse-sandy areas in both northern and southern parts of the site. Additionally, it undermines the efforts of protecting species threatened by bycatch such as harbor porpoises and seabirds (measures 3 and 4) by further impairing their food source. The NSAC OIGs draw attention to a study by the GEOMAR-Institute¹⁴ which highlights the negative effects of sandeel fisheries in particular on the basic food source of harbor porpoises and seabirds and stresses the need for a consistent exclusion of all mobile bottom-contacting fishing gear in “Sylt Outer Reef”.

The NSAC OIGs also reject the exemption granted to brown shrimp fisheries with beam trawls in the eastern area of the MPA (measure 1b) based on its type of fishing gear according to table 1. It remains unclear on which scientific basis the exception for beam trawl and bobbin ropes for shrimp fisheries has been made. Before such an exception could be made, results from scientific studies or projects clearly need to show compatibility of brown shrimp fisheries with conservation goals of this specific site. Nevertheless, and especially in the case of brown shrimp fisheries, an integrative approach to fisheries management is needed, also considering the coastal waters - i.e. the territorial sea and the internal waters, in particular the Wadden Sea. The OIGs consider the NSAC Brown Shrimp Focus Group to be a good place to discuss scientific, socio-economic and environmental issues with regard to brown shrimp fisheries in the wider North Sea and further restrictions within MPAs in particular. The NSAC industry rejects this stance and refers again to the report of ICES WKTRADE3¹⁵ where brown shrimp fishery has been described as a “low impact fishery”.

The NSAC OIGs call for the exclusion of all mobile bottom contacting gear in the entire “Sylt Outer Reef” - in accordance with the EU Commission, as requested in their letter as of 24th May 2019 - including Amrum Bank (see Measure 2). Although the proposed No Take Zone on the Amrum Bank within the “Sylt Outer Reef” (measure 2) has more than doubled in size compared to the 2019 proposal (from 25% to 55% of the sandbank designated as No Take), the current proposal continues to fall short as it only protects approx. 1% of the MPA from all types of fishing. Thereby Germany misses the opportunity to approach the EU Biodiversity strategy's goal of strictly protecting at least 10% of its waters. If fully protected from fishing, the Amrum Bank could function as an important reference area under the MSFD and for the expected recovery of sandbanks from fishing activity. It remains unclear from the JR and its background documents why only about half of the only sandbank in “Sylt Outer Reef” is to be closed to all forms of fisheries, while it is of outstanding ecological importance. The NSAC industry highlights that it should not be an intention of nature directives to exclude fisheries from MPAs, but that, in cooperation with marine users, co-existence is enabled to the benefit of both, fishing and conservation objectives.

In the opinion of the NSAC OIGs the exclusion of gillnet fishing in both N2000 sites “Eastern German Bight” and “Sylt Outer Reef” is crucial for the protection of seabird populations and harbor porpoises in this area. Therefore, they fully support measure 3 but criticize the time restriction on the western part of the MPA (measure 4). High densities of harbor porpoises as

¹⁴ https://www.bfn.de/fileadmin/BfN/meeresundkuestenschutz/Dokumente/Sandaale/Auswirkungen-der-Sandaalfischerei_GEOMAR-barrierefrei.pdf

¹⁵ The workshop report will be published in June 2021.

well as pairs of mothers and calves are found year-round in this area for which reason the risk of by-catches are incompatible with the conservation objectives of the site. Therefore, year-round protection of harbor porpoises is needed within the entire MPA. This would, among others, enable easier monitoring, control and enforcement. A seasonal exclusion of gillnet fishing is insufficient, as also stated by EU COM in their letter as of 24th May 2019. The NSAC industry stresses that so far no documentation on by-catch issues in the area has been presented to this date. The NSAC OIGs would like to note in this context that this is a result of a lack of effective control instruments.

Regarding measure 7 it remains unclear to the NSAC members how the status quo of the average effort of passive gears of the last six years will be determined as a baseline as well as how it will be monitored in future. The EU Commission also draws attention to this limitation in its letter of 24th May 2019 and proposes a complete exclusion of gill nets for “Borkum Reef Ground” and “Dogger Bank”. It is the opinion of the NSAC OIGs that continuation of fishing with gillnets and entangling nets, to whatever extent, is not compatible with the conservation objectives of both protected areas.

2.3 Control and enforcement

In relation to control and enforcement, the NSAC is of the opinion that different control measures should not be set up individually for every area or EEZ of the Member States - these should instead be a part of the European Control Regulation. This would positively contribute to the level playing field in the European marine area.

Monitoring the implementation of the measures will be a decisive factor to ensure the effectiveness of the proposed fisheries management measures in future. The reduction of VMS intervals to 10 minutes, the establishment of an alarm zone, corresponding reporting requirements and the immediate coming into force of the provisions are welcomed. However, automated control based solely on VMS signals and e-logs and only for ships larger than 12m is not sufficient, also noted by the EU COM in their letter of 24th May 2019. This is also not in line with the current position of both Commission as well as European Parliament with regard to the ongoing revision of the control regulation, which foresees stringent control measures on geo-localisation and logbook requirements also for small scale vessels to enable a level playing field. The establishment of a monitoring system for fishing vessels smaller than 12m is needed, for example by means of mobile devices for geo-localisation, such as GPS-devices, VMS and AIS, remote electronic monitoring (automated camera surveillance) and the possibility to control any fisheries vehicle in the protected areas both while fishing and during transit, especially to ensure the effectiveness of measure 2. In addition, there must be a reporting obligation for by-catch such as ETP-species, seabirds, and marine mammals.

The NSAC OIGs further call for clarification of the implementation of on-spot monitoring, as it remains unclear how often these checks are to be carried out. The same applies to the described inspection of catches, fishing documents and fishing gear. It is necessary that these inspections be carried out on a random, but frequent basis and unannounced. We assume that the proposed measures of control and enforcement are applied to any vessel fishing or

passing the area – irrespective of the exception made for brown shrimp fisheries in measure 1b.

2.4 Monitoring

An evaluation of the effects of the exclusion of fisheries through scientific monitoring of measures is crucial. We therefore welcome the implementation of regular and intensive monitoring activities to assess the conditions of species and habitat - as required under provisions of the Habitats Directive after six years. However, it remains unclear from the JR why an evaluation of the effectiveness of Measure 2 is to be carried out after eight years.

NSAC Industry is of the opinion that there is no reason for continuation of measures which do not irrefutably contribute to amelioration of environmental status. NSAC OIGs in turn believe that the assessment of the measures proposed here can only be aimed at determining whether and to what extent the measure has led to an improvement of conservation status and if further improvements of fisheries management may still be necessary. The proposed monitoring measures should serve to achieve the protection objectives in the MPAs and not primarily the resumption or reinforcement of the uses. Therefore, the results of the research must not lead to an abandonment of the measures after six years (prohibition of deterioration).

3. Core message

In conclusion we summarise our advice in the following points:

- The NSAC welcomes well substantiated management measures with sufficient scientific backing of the proposed MPAs. It is up to the proponents of the JR to provide the necessary backing which is unbiased, specific and carried out with robust scientific methodology, and to provide a rationale in accordance with Art. 6(2) of the Habitats Directive.
- The NSAC OIGs believe that precautionary approach is to be applied.
- The NSAC OIGs overall support the suggested Joint Recommendation, but see the need for further improvements to ensure effective protection of conservation features within MPAs of the German North Sea EEZ. While the NSAC OIGs support the exclusion of gillnet fishing in both N2000 sites (measure 3), the time restriction on the western part of the MPA (measure 4) is criticized. NSAC OIGs call for the exclusion of all mobile bottom contacting gear in the entire "Sylt Outer Reef" and reject the exception made for brown shrimp fisheries.
- The NSAC OIGs specifically welcome the inclusion of Species-rich gravel, coarse sand and shell-gravel. This is essential to achieve the conservation objectives of the entire MPA and to support the achievement of the aims of the MSFD.
- The protection measures relate to N2000 habitat types and impact of brown shrimp fisheries. The NSAC industry is of the opinion that the studies on the impact of brown shrimp gear on sandbanks show that fisheries closures do not result in any measurable

changes in the non-fished areas compared to the fished areas. The same holds for Sandeel fisheries.

- The NSAC industry believes that the conservation status shall be determined prior to implementing any restrictive measures.
- The NSAC takes note from the JR text that a project has recently started to define conservation status of the Natura 2000 sites in the German EEZ based on the MSFD descriptors and monitor the long-term effects of exclusion of mobile bottom-contacting fisheries on benthic habitats and communities in the German MPAs.
- The NSAC industry notes that the current research design for determining conservation baselines indicates the deficit of knowledge on conservation status and conservation targets in relation to benthic habitats.
- The NSAC industry calls for consideration of ICES WKTRADE3 findings on the impact of bottom-fisheries on the seabed.
- The NSAC industry believes that a favorable conservation status is not to be achieved by eliminating all marine activities, but rather by informed and scientifically established management measures.
- NSAC is of the opinion that the program of measures should:
 - be based on scientific evidence;
 - include a socio-economic and ecological impact analysis.